Kesultanan Pahang v Sathask Realty Sdn Bhd

FEDERAL COURT (KUALA LUMPUR) — CIVIL APPEAL NO 01-2 OF 1997(C)
MOHD AZMI, PEH SWEE CHIN AND MOHAMED DZAIDDIN FCJJ
16 APRIL 1998

Land Law *— Crown/State land — Lease — Land leased to company — Lease was to be granted to 'persons not being Malay subjects' — Whether the word 'persons' in s 6(i)(b) of the Sultanate Lands Enactment of Pahang 1919 (FMS Cap 221) includes an artificial person — Whether lease granted to a company was invalid on the ground that it was not a natural person — Sultanate Lands Enactment of Pahang 1919 (FMS Cap 221) s 6 — General Clauses Enactment 1897 of Pahang s 2*

Statutory Interpretation *— Canons of construction — Noscitur a sociis — Whether applicable — Meaning of 'person' — Whether word 'person' is a word with doubtful meaning, or if taken singly is inoperative or cannot mean anything by itself — General Clauses Enactment 1897 of Pahang s 2 — Sultanate Lands Enactment of Pahang 1919 (FMS Cap 221) s 6*

Statutory Interpretation *— Construction of statutes — Purposive approach — Meaning of 'person' — Whether the word 'persons' within the context of the phrase 'persons not being Malay subjects of the said Ruler' enacted in s 6(i)(b) of the Sultanate Lands Enactment of Pahang 1919 (FMS Cap 221) includes an artificial person — Whether there is anything repugnant in the nature of the subject matter or in the manifest object or in the context of the Sultanate Lands Enactment, which indicates that the word 'persons' excludes corporations — Sultanate Lands Enactment of Pahang 1919 (FMS Cap 221) s 6 — General Clauses Enactment 1897 of Pahang s 2*

Statutory Interpretation *— Construction of statutes — Applicability of interpretation legislation — Meaning of word to be construed has been statutorily defined but subject to a proviso — Whether court could reject statutory definition in order to hold that the word has a doubtful meaning — Whether statutory definition is repugnant to the statute, with its subject, or with its context — Whether court ought to ascertain legislature's intention by adopting the purposive approach rule — General Clauses Enactment 1897 of Pahang s 2 — Sultanate Lands Enactment of Pahang 1919 (FMS Cap 221) s 6*

Words and Phrases *— 'Person' — Sultanate Lands Enactment of Pahang 1919 (FMS Cap 221) s 6*

The previous Ruler of Pahang, the late Sultan Abu Bakar of Pahang, leased one of the Sultanate lands ('the land') to the respondent company ('the respondent') for a term of 99 years. The lease was executed under the hand of the said late Sultan Abu Bakar and 'countersigned in token of his assent by the Menteri Besar' ('the lease'). The respondent later sub-leased the land or parts of the land by subleases to other parties. The Sultanate of Pahang (later known as 'Kesultanan Pahang') ('the appellant') instituted a claim before a special tribunal ('the tribunal') created by s 7 of the Sultanate Lands Enactment of Pahang 1919 (FMS Cap 221) ('the Enactment'), the claim being that by virtue of ss 4 and 6 of the Enactment, the lease granted to the respondent was invalid on the ground that the

respondent was not a natural person, nor a subject of the Ruler of Pahang. The tribunal ruled that the lease was null and void ab initio and the sub-leases executed thereunder were void accordingly. The respondent applied to High Court, for the issue of an order of certiorari to quash the decision of the tribunal. The High Court reversed the finding of the tribunal and held that the tribunal had committed an error of law apparent on the face of the record when it ruled that the word 'subjects' in s 6(i)(b) of the Enactment restricted the meaning of the word 'persons' to mean natural persons only. The learned trial judge further held that the word 'persons' under s 6(i)(b) should be given a broader meaning to include a body corporate and that 'persons' in the expression 'persons not being Malay subjects of the said Ruler' included the respondent.

The appellant appealed to the Court of Appeal. The appellant substantially depended on the Interpretation Acts 1948 and 1967 (wherein is found the definition of the word 'person' as including any body of persons, corporate or unincorporate) and s 2 of the General Clauses Enactment 1897 of Pahang ('the Interpretation Enactment'), the forerunner for Pahang of the Interpretation Acts 1948 and 1967. The majority of the Court of Appeal upheld the decision of the High Court (see [1997] 2 MLJ 701). The dissenting judgment in the Court of Appeal held to the effect that the word 'persons' must mean natural persons and this could be gathered from the repeated use of the words 'Malay subjects' or 'subjects of the Ruler' in the Enactment and that s 2 of the Interpretation Enactment provided to the effect for the statutory definitions therein to be subject to 'something repugnant in the subject or context'.

The appellant, being dissatisfied, further appealed to the Federal Court. Counsel for the appellant submitted that the majority decision of the Court of Appeal had misconstrued the meaning of the expression 'persons not being Malay subjects' in s 6(i)(b) by placing great emphasis on the word 'persons' only, and disregarded the remaining words 'not being Malay subjects'. According to counsel, the emphasis should be on the word 'subjects' because s 6(i)(a) requires written consent of the Ruler to Malay subjects of the Ruler and s 6(i)(b) requires written consent of both the Ruler and the Menteri Besar to persons who are not being Malay subjects of the Ruler. Counsel also argued that the word 'subject' can only refer to a natural person because of an element of 'allegiance' to the Ruler attached to it. In reply, counsel for the respondent submitted there was nothing repugnant in the provisions of the Enactment to bring about the exclusion of the application of the Interpretation Acts 1948 and 1967 or its earlier corresponding enactment to be put to bear upon the interpretation of the word 'person' to exclude a body corporate. In the circumstances, the court should adopt a liberal interpretation to s 6(i)(b) and construe the word 'persons' to include a corporation. The crucial issue for determination in this appeal is the true construction of the word 'persons' within the context of the phrase 'persons not being Malay subjects of the said Ruler' enacted in

A s 6(i)(b) of the Enactment. The question was, did the word include or exclude an artificial person like the respondent? The appellant said the word should be limited to natural persons, but the respondent argued otherwise.

In his submission, counsel for the appellant also raised two other B matters in this appeal relating to jurisdiction of the courts. Firstly, he said that the High Court had no jurisdiction at all to hear the company's application for judicial review in view of art 181(2) of the Federal Constitution. Secondly, he submitted that the jurisdiction of the High Court in judicial review has been ousted by s 7 of the Enactment.

C

Held, allowing the appeal:

(1) (Per **Mohd Azmi FCJ**) Although under s 2 of the Interpretation Enactment and the Interpretation Acts of 1948 and 1967, the word 'persons' was defined to include companies incorporated D under the Companies Act 1965, on the plain meaning of s 6(i)(b) of the Enactment, by its phraseology and expression particularly in the context of the phrase 'persons not being Malay subjects of the said Ruler', the word 'persons' must necessarily be confined to natural persons who are non-Malay subjects of the Ruler of Pahang. The clear intention of the State Legislature to exclude E incorporated companies like the respondent from the operation of s 6(i)(b) is amply demonstrated by the repeated use of the words 'subjects' and 'Ruler' throughout the Enactment apart from providing the important legislative classification between the Ruler's Malay subjects on the one hand and His non-Malay F subjects on the other. To interpret the word 'persons' in isolation without regard to the context and circumstances in which the word is used, and to turn a blind eye on the obvious repugnancy and inconsistency existing by the application of the general definition to the specific and special Enactment under consideration would be wholly unjustified and wrong in law. The G inclusion of artificial persons in s 6(i)(b) would not only be inconsistent with the definition of the word 'Malay' in s 2 of the Enactment but also repugnant to the term 'subjects of the Ruler' as understood and legally recognized in this country. Not giving the word 'persons' its ordinary signification and widening the H meaning of the word used by the legislature in the subsection, would also be inconsistent with the whole tenor of the Enactment which expressly imposed restriction on the power of the Ruler to grant leases of Sultanate lands or even allow temporary occupation of such lands to individual persons who are not His Highness' subjects as provided in particular by ss 4, 5, 6 and 7. The I preservation of the special relationship between the Ruler and the subjects of the Ruler is the moving spirit and one of the main objectives of the Enactment as reflected by the repeated use of the words 'Ruler' and 'subjects' throughout the legislation (see p 546D–I).

(2) (Per **Mohd Azmi FCJ**) As for the argument that the High Court had no jurisdiction at all to hear the company's application for judicial review in view of art 181(2) of the Federal Constitution, it must be observed that the case of *Karpal Singh v Sultan of Selangor* [1988] 1 MLJ 64 relied on by counsel was made in the context of the amended and not the original art 181(2). Further, learned counsel had sought to rely on the case as if the appellant was being sued both before the tribunal and the High Court. This is not so as the claim in the proceeding before the tribunal was not filed by the Sultan in his personal capacity. As regards the High Court proceeding, even if it could be said to have been brought against the Sultan in his personal capacity, His Highness had by his conduct waived the legal immunity from being sued which the Ruler was enjoying under the unamended art 181(2) of the Federal Constitution. In fact, the Ruler had waived his immunity not only in the High Court but also in the Court of Appeal and the Federal Court by filing the respective notices of appeal and submitting himself to the jurisdiction of the courts (see pp 544C–I and 545A); *Karpal Singh v Sultan of Selangor* [1988] 1 MLJ 64 distinguished.

As for the second argument, it must be noted that the ouster clause in s 7 of the Enactment clearly deals with appeals only. Further, the only 'claim' to the Sultanate lands was made by the appellant before the tribunal. There was no claim as such in the High Court. The matter came before the High Court by way of judicial review under the inherent jurisdiction of the superior courts to rectify any error of law on the face of the records. Thus, it is not by way of appeal which is prohibited by s 7(i). Therefore, the Court of Appeal was correct in holding that s 7(i) cannot oust the inherent jurisdiction of the court (see p 545E–F).

(3) (Per **Mohd Azmi FCJ**) In order to interfere by judicial review, the courts below must look for any illegality or irrationality or procedural impropriety in the decision-making process of the tribunal in arriving at its interpretation of s 6(i)(b) of the Enactment, and not at the decision itself. In the present appeal, the Court of Appeal ought to have ruled that the High Court could only interfere by judicial review if the nature and manner of interpreting s 6(i)(a) by the tribunal was either illegal or irrational. As the tribunal did not commit any such error in arriving at its judgment, the courts below had no power to substitute the tribunal's interpretation of the section with their own. Consequently, the orders of the High Court and Court of Appeal interfering with the said judgment must be set aside, and the orders of the tribunal be restored (see pp 543I, 544A and 547B–C).

(4) (Per **Mohamed Dzaiddin FCJ**) It is incumbent upon the court to examine whether, in view of the definition of the word 'person' in s 2(xviii) of the Interpretation Enactment, there is anything repugnant in the nature of the subject matter or in the manifest

A object or in the context of the Enactment which indicates that the word 'persons' in the expression 'persons not being Malay subjects' in s 6(i)(b) of the Enactment excludes corporations (see p 563B–C); *Law Society v United Service Bureau Ltd* [1934] 1 KB 343 followed.

B In the context of s 6 as to who can be lessees of the Sultanate lands, it is patently clear that only Malay subjects and persons who are non-Malay subjects of the said Ruler can hold the lease. In the light of the whole framework of the Enactment and the repeated use of the words 'Malay subjects of the Ruler' in the Enactment, in construing s 6(i)(b) the emphasis must be on the C words 'Malay subjects' and not the word 'persons'. Hence, the words 'persons not being Malay subjects of the said Ruler' must be intended to refer to natural persons who are non-Malay subjects of the Ruler (see p 563E–G).

Moreover, for the purposes of the Enactment, s 2(a) defines D 'Malay' as a person belonging to any Malayan race who habitually speaks the Malay language or any Malayan language and professes the Muslim religion. Section 2(b) goes on to state that every Malay born within the State of Pahang shall be deemed to be the subject of the Ruler of Pahang. Therefore, in the context of s 2, an artificial legal person, as opposed to a natural person, cannot E be a 'Malay' and become a subject of the Ruler of Pahang. This is because a corporation cannot speak Malay or any Malayan language and cannot profess Islam. Moreover, since it cannot be born in Pahang, it cannot be deemed to be a non-Malay subject of the Ruler of Pahang. Again, in view of a clear definition of the word F 'Malay' and the deeming provision in the Enactment, the word 'persons' in the expression 'persons not being Malay subjects of the said Ruler' must refer to natural persons (see pp 563H–I and 564A).

Furthermore, the word 'subjects' in s 6(i)(b) can only refer G to natural persons because of an element of 'allegiance' attached to natural persons. Since the emphasis is on the word 'subjects' of the Ruler, it is reasonable to construe that only natural persons can give allegiance to the Ruler and enjoy his protection.

Upon a consideration of the Enactment as a whole, there is repugnancy in the context of the Enactment which indicates that H the legislature had contemplated that the word 'persons' in the expression 'persons not being Malay subjects of the said Ruler' in s 6(i)(b) refers to natural persons only and excludes a corporation. In the circumstances, the Court of Appeal was wrong in holding that the word 'persons' in the expression 'persons I not being Malay subjects of the said Ruler' in s 6(i)(b) of the Enactment included a corporation (see p 564B–E).

(5) (Per **Peh Swee Chin FCJ,** dissenting) The most important rule for interpreting a statute, or any section or words therein, is the purposive approach rule. The purposive approach rule which is

for finding the intention of the legislature means, for the purpose of the instant case, in a nutshell, answers to the questions, first and foremost, as to what is the subject matter and object of the Enactment; as to what is the part that is to be played by s 6(i)(b) of the Enactment and would the definition of 'person' in the Interpretation Enactment, if adopted, be found repugnant to or inconsistent with the object of the Enactment. In this case, the dissenting judgment of the Court of Appeal does not seem to deal with this primary rule of finding out the legislative intent, but merely found the meaning for the words 'persons not being Malay subjects' from the words 'the subjects of the Ruler' and 'Malay subjects' in other sections of the Enactment (see pp 552B–C and 553A–B).

(6) (Per **Peh Swee Chin FCJ**) The rule of interpretation known as 'Noscitur a sociis', ie 'known from its associates' was not applicable in this case. This was because the word 'persons' in the phrase of 'persons not being Malay subjects' in s 6(i)(b) of the Enactment is not a word with doubtful meaning, neither is it a word which if taken singly is inoperative or cannot mean anything by itself. The word 'person' was defined by a statute, ie by the Interpretation Enactment which was already in existence when the Enactment itself was enacted (see p 553E–I).

(7) (Per **Peh Swee Chin FCJ**) If a word in a statute has been statutorily defined albeit subject to a proviso, it would require indeed an enormous amount of persuasion to ask a court to reject the statutory definition in order to hold that the word has a doubtful meaning. It only remains to be seen whether the statutory definition of the word 'persons' is repugnant to the Enactment, with its subject, or with its context, ie with other words in any part of the Enactment. For this, the Enactment has to be looked through to ascertain the legislature's intention by adopting the purposive approach rule (see p 554B–C).

The subject matter of the Enactment is the manner of dealings of the Ruler's Sultanate lands, while the object of the Enactment is self-evident, it is to place restrictions on the Ruler's dealings with the Sultanate lands or in other words, the mischief sought to be avoided by the Enactment is the hitherto complete freedom of the Ruler to deal with the Sultanate lands, or more precisely lands which prior to the Enactment, the Ruler was the registered proprietor. In view of this, it is self-evident that the lease to the company cannot be possibly inconsistent with the subject of the Enactment, because it is consistent with the manner the Ruler was to transact dealings of Sultanate lands; neither could it be inconsistent with any words or sections of the Enactment. Therefore, so long as the Menteri Besar and the Ruler signed the lease, it would not matter whether the lease was given to Malay subjects of the Ruler or a group of non-Malays who incorporated a company like the company (see p 554E–I).

A **[Bahasa Malaysia summary**

Pemerintah Negeri Pahang yang dahulu, mendiang Sultan Abu Bakar dari Pahang, telah memajak sebidang daripada tanah-tanah Kesultanan ('tanah tersebut') kepada syarikat penentang ('penentang') bagi suatu tempoh selama 99 tahun. Pajakan ini telah dilaksanakan B di bawah tandatangan mendiang Sultan Abu Bakar tersebut dan 'ditandatangani balas sebagai tanda persetujuan oleh Menteri Besar' ('pajakan tersebut'). Penentang kemudiannya telah memajak kecil tanah tersebut atau bahagian-bahagiannya dengan pajakan-pajakan kecil kepada pihak-pihak yang lain. Kesultanan Negeri Pahang (kemudiannya dikenali sebagai 'Kesultanan Pahang') ('perayu') telah C memulakan tuntutan di hadapan sebuah tribunal khas ('tribunal tersebut') yang telah diwujudkan oleh s 7 Enakmen Tanah-tanah Kesultanan Pahang 1919 (NMB Bab 221) ('Enakmen tersebut'), tuntutan tersebut bahawa disebabkan ss 4 dan 6 Enakmen tersebut, pajakan yang diberikan kepada penentang adalah tak sah atas alasan D bahawa penentang bukannya orang sebenar, mahupun seorang rakyat Pemerintah Negeri Pahang. Tribunal tersebut telah memutuskan bahawa pajakan tersebut adalah batal dan tak sah ab initio dan pajakan-pajakan kecil yang telah dilaksanakan di bawahnya adalah sehubungan itu batal. Penentang telah memohon kepada Mahkamah Tinggi untuk pengeluaran satu perintah certiorari bagi membatalkan E keputusan tribunal tersebut. Mahkamah Tinggi telah mengakaskan keputusan tribunal tersebut dan memutuskan bahawa tribunal tersebut telah melakukan kesilapan undang-undang yang jelas pada zahir rekod apabila ianya memutuskan bahawa perkataan 'rakyat-rakyat' dalam s 6(i)(b) Enakmen tersebut menghadkan maksud perkataan F 'orang-orang' untuk memberikan maksud orang-orang sebenar sahaja. Hakim perbicaraan yang arif selanjutnya memutuskan bahawa perkataan 'orang-orang' di bawah s 6(i)(b) seharusnya diberikan maksud yang lebih luas bagi merangkumi sebuah badan korporat dan bahawa 'orang-orang' dalam ungkapan 'orang-orang yang bukannya merupakan rakyat berbangsa Melayu Pemerintah tersebut' termasuk G penentang.

Perayu telah merayu kepada Mahkamah Rayuan. Perayu telah secara substansialnya bergantung pada Akta Tafsiran 1948 dan 1967 (di dalam mana didapati takrifan perkataan 'orang' sebagai termasuk mana-mana pertubuhan orang-orang, korporat atau tidak H diperbadankan) dan s 2 Enakmen Fasal Am Pahang 1897 ('Enakmen Tafsiran'), perintis bagi Negeri Pahang akan Akta Tafsiran 1948 dan 1967. Bilangan majoriti Mahkamah Rayuan telah mengesahkan keputusan Mahkamah Tinggi (lihat [1997] 2 MLJ 701). Penghakiman yang menentang dalam Mahkamah Rayuan memutuskan bagi menguatkuasakan bahawa perkataan 'orang-orang' semestinya I bermakna orang-orang sebenar dan ini boleh diandaikan daripada penggunaan berulangan perkataan-perkataan 'rakyat-rakyat Melayu' (Malay subjects) atau 'rakyat-rakyat Pemerintah' dalam Enakmen tersebut dan bahawa s 2 Enakmen Tafsiran memperuntukkan

sedemikian untuk takrifan berkanun di dalamnya sebagai tertakluk kepada 'sesuatu yang bertentangan dalam perkara itu atau konteksnya'. A

Perayu, yang tidak puas hati, telah selanjutnya merayu kepada Mahkamah Persekutuan. Peguam bagi pihak perayu telah berhujah bahawa keputusan majoriti Mahkamah Rayuan telah tersalah tafsir makna ungkapan 'orang-orang yang bukan merupakan rakyat-rakyat berbangsa Melayu' dalam s 6(i)(b) dengan memberikan penekanan yang amat tegas kepada perkataan 'orang-orang' sahaja, dan tidak menghiraukan perkataan-perkataan yang selebihnya, 'bukan merupakan rakyat-rakyat berbangsa Melayu'. Menurut peguam, penekanan tersebut seharusnya terhadap perkataan 'rakyat-rakyat' kerana s 6(i)(a) memerlukan persetujuan bertulis Pemerintah tersebut kepada rakyat Melayu Pemerintah tersebut dan s 6(i)(b) memerlukan persetujuan bertulis kedua-dua Pemerintah dan Menteri Besar kepada orang-orang yang bukan merupakan rakyat berbangsa Melayu Pemerintah tersebut. Peguam juga berhujah bahawa perkataan 'rakyat' hanya boleh merujuk kepada orang sebenar disebabkan unsur taat setia kepada Pemerintah. Bagi menjawabnya, peguam bagi pihak penentang berhujah bahawa tidak terdapat apa-apa yang bertentangan dalam peruntukan-peruntukan Enakmen tersebut untuk menyebabkan penyingkiran pemakaian Akta Tafsiran 1948 dan 1967 atau enakmen awal yang sepadan dengannya untuk mempertahankan tafsiran perkataan 'orang' supaya tidak termasuk badan korporat. Dalam keadaan itu, mahkamah seharusnya menerimapakai suatu tafsiran yang liberal kepada s 6(i)(b) dan mentafsirkan perkataan 'orang-orang' supaya termasuk sebuah perbadanan. Isu penting untuk penentuan dalam rayuan ini adalah tafsiran sebenar perkataan 'orang-orang' di dalam lingkungan konteks ungkapan 'orang-orang yang bukan merupakan rakyat berbangsa Melayu Pemerintah tersebut' yang digubalkan dalam s 6(i)(b) Enakmen tersebut. Persoalannya ialah, adakah perkataan itu termasuk ataupun mengecualikan seorang buatan seperti penentang? Perayu mengatakan bahawa perkataan itu seharusnya dihadkan kepada orang-orang sebenar, tetapi penentang berhujah sebaliknya. B C D E F G

Dalam penghujahannya, peguam bagi pihak perayu juga telah membangkitkan dua perkara yang lain dalam rayuan ini berhubung dengan bidang kuasa mahkamah-mahkamah. Pertamanya, beliau mengatakan bahawa Mahkamah Tinggi tidak mempunyai bidang kuasa sama sekali untuk mendengar permohonan syarikat untuk kajian semula kehakiman memandangkan perkara 181(2) Perlembagaan Persekutuan. Keduanya, beliau berhujah bahawa bidang kuasa Mahkamah Tinggi dalam kajian semula kehakiman telah disingkirkan oleh s 7 Enakmen tersebut. H

Diputuskan, membenarkan rayuan: I

(1) (Oleh **Mohd Azmi HMP**) Walaupun di bawah s 2 Enakmen Tafsiran tersebut dan Akta Tafsiran 1948 dan 1967, perkataan 'orang-orang' telah ditakrifkan sebagai termasuk syarikat-syarikat

yang diperbadankan di bawah Akta Syarikat 1965, menurut maksud biasa s 6(i)(b) Enakmen tersebut, melalui penyusunan rangkai kata dan ungkapan, khususnya dalam konteks ungkapan 'orang-orang yang bukannya merupakan rakyat-rakyat berbangsa Melayu Pemerintah tersebut', perkataan 'orang-orang' semestinya dihadkan kepada orang-orang sebenar yang merupakan rakyat-rakyat Pemerintah Negeri Pahang yang bukan berbangsa Melayu. Niat jelas Perundangan Negeri untuk tidak memasukkan syarikat-syarikat yang telah diperbadankan seperti penentang daripada terlingkung di bawah operasi s 6(i)(b) ditunjukkan secukupnya melalui penggunaan berulangan perkataan 'rakyat-rakyat' dan 'Pemerintah' di seluruh Enakmen tersebut selain daripada memperuntukkan klasifikasi perundangan yang penting di antara rakyat-rakyat Pemerintah yang berbangsa Melayu di satu pihak dan rakyat-rakyatnya yang bukan berbangsa Melayu di pihak yang lain pula. Bagi mentafsirkan perkataan 'orang-orang' secara sendirinya tanpa menghiraukan konteks dan keadaan-keadaan dalam mana perkataan itu digunakan, dan tidak mempedulikan pertentangan dan sifat ketidaktekalan nyata yang wujud dengan pemakaian takrifan umum kepada Enakmen khas dan spesifik yang dipertimbangkan itu adalah tidak wajar dan salah di sisi undang-undang. Pemasukan orang-orang buatan dalam s 6(i)(b) bukan sahaja tak konsisten dengan takrifan perkataan 'Melayu' dalam s 2 Enakmen tersebut tetapi juga bertentangan dengan ungkapan 'rakyat-rakyat Pemerintah' sepertimana yang difahamkan dan diiktirafkan di sisi undang-undang di negara ini. Dengan tidak memberikan perkataan 'orang-orang' pemaknaannya yang biasa dan memperluaskan makna perkataan yang digunakan oleh perundangan dalam subseksyen tersebut, juga tak konsisten dengan keseluruhan maksud Enakmen tersebut yang secara nyatanya mengenakan sekatan ke atas kuasa Pemerintah untuk memberikan pajakan tanah-tanah Kesultanan atau pun membenarkan penghunian sementara tanah-tanah sedemikian kepada orang-orang individu yang bukannnya merupakan rakyat-rakyat yang di bawah naungan Baginda sepertimana yang diperuntukkan khususnya dalam ss 4, 5, 6 dan 7. Pengekalan perhubungan khas antara Pemerintah dan rakyat-rakyatnya adalah sifat kerohanian dan salah satu objektif utama Enakmen tersebut sepertimana yang dibayangkan oleh penggunaan berulangan perkataan-perkataan 'Pemerintah' dan 'rakyat-rakyat' di seluruh perundangan tersebut (lihat ms 546D–I).

(2) (Oleh **Mohd Azmi HMP**) Berhubung penghujahan bahawa Mahkamah Tinggi tidak mempunyai bidang kuasa sama sekali untuk mendengar permohonan syarikat tersebut bagi kajian semula kehakiman memandangkan perkara 181(2) Perlembagaan Persekutuan, ianya harus diperhatikan bahawa kes *Karpal Singh v Sultan Selangor* [1988] 1 MLJ 64 yang diharapkan oleh peguam telah dibuat dalam konteks perkara 181(2) yang telah dipinda dan bukan yang asal. Selanjutnya, peguam yang bijaksana telah

berusaha untuk bergantung ke atas kes tersebut seolah-seolah perayu didakwa di hadapan kedua-dua tribunal tersebut dan Mahkamah Tinggi. Hal ini bukannya sedemikian kerana tuntutan dalam prosiding di hadapan tribunal tersebut telah tidak difailkan oleh Sultan tersebut dalam keupayaan peribadinya. Berhubung prosiding Mahkamah Tinggi, jika pun ianya boleh dikatakan telah dimulakan terhadap Sultan tersebut dalam keupayaan peribadinya, Baginda telah menurut perlakuannya mengenepikan kekebalan undang-undang daripada didakwa yang mana dinikmati oleh Pemerintah tersebut di bawah perkara 181 Perlembagaan Persekutuan yang tidak dipinda itu. Malahan, Pemerintah tersebut telah mengenepikan kekebalannya bukan sahaja di Mahkamah Tinggi tetapi juga di Mahkamah Rayuan dan Mahkamah Persekutuan dengan memfailkan notis rayuan masing-masing dan menyerah diri kepada bidang kuasa mahkamah-mahkamah (lihat ms 544C–I dan 545A); *Karpal Singh lwn Sultan Selangor* [1988] 1 MLJ 64 dibeza.

Berhubung penghujahan kedua, adalah harus diperhatikan bahawa fasal penyingkiran dalam s 7 Enakmen tersebut jelas berurusan dengan perkara rayuan sahaja. Selanjutnya, satu-satunya 'tuntutan' kepada tanah-tanah Kesultanan telah dibuat oleh perayu di hadapan tribunal tersebut. Tidak terdapat tuntutan seperti itu di Mahkamah Tinggi melalui kajian semula kehakiman di bawah bidang kuasa sedia ada mahkamah atasan untuk memperbetulkan sebarang kesilapan undang-undang pada zahir rekod. Dengan itu, ianya bukan melalui rayuan yang mana dilarang oleh s 7(i). Dengan itu Mahkamah Rayuan betul dalam memutuskan bahawa s 7(i) tidak boleh menyingkirkan bidang kuasa sedia ada mahkamah (lihat ms 545E–F).

(3) (Oleh **Mohd Azmi HMP**) Bagi mengganggu keputusan melalui kajian semula kehakiman, mahkamah-mahkamah bawah semestinya mencari sebarang kepenyalahan undang-undang atau sifat tak rasional atau kesilapan prosedur dalam proses membuat keputusan oleh tribunal tersebut dalam mencapai pentafsirannya atas s 6(i)(b) Enakmen tersebut, dan bukannya pada keputusan itu sendiri. Dalam rayuan ini, Mahkamah Rayuan sepatutnya telah memutuskan bahawa Mahkamah Tinggi hanya boleh masuk campur melalui kajian semula kehakiman jika sifat dan cara pentafsiran s 6(i)(a) oleh tribunal tersebut adalah sama ada tak sah atau tak rasional. Oleh kerana tribunal tersebut tidak melakukan kesilapan yang sedemikian dalam mencapai penghakimannya, mahkamah-mahkamah bawah tidak mempunyai kuasa untuk menggantikan pentafsiran tribunal tersebut atas seksyen tersebut dengan tafsiran mereka sendiri. Akibatnya, perintah-perintah Mahkamah Tinggi dan Mahkamah Rayuan yang mengganggu penghakiman tersebut mestilah diketepikan, dan perintah-perintah tribunal tersebut dikembalikan semula (lihat ms 543I, 544A dan 547B–C).

A (4) (Oleh **Mohamed Dzaiddin HMP**) Mahkamah wajib memeriksa sama ada, memandangkan takrifan perkataan 'orang-orang' dalam s 2(xviii) Enakmen Tafsiran, terdapatnya apa-apa perkara yang bertentangan dengan sifat perkara yang diperihalkan itu atau dalam konteks Enakmen tersebut yang menunjukkan bahawa perkataan 'orang-orang' dalam ungkapan 'orang-orang yang B bukan merupakan rakyat yang berbangsa Melayu' dalam s 6(i)(b) Enakmen tersebut tidak termasuk perbadanan (lihat ms 563B–C); *Law Society v United Service Bureau Ltd* [1934] 1 KB 343 diikut.

Dalam konteks s 6 mengenai siapakah yang boleh menjadi penerima pajakan tanah-tanah Kesultanan, ianya amat ketara C bahawa hanya rakyat-rakyat berbangsa Melayu dan orang-orang yang bukan merupakan rakyat-rakyat berbangsa Melayu Pemerintah tersebut sahaja boleh memegang pajakan itu. Memandangkan keseluruhan rangka Enakmen tersebut dan penggunaan berulangan perkataan 'rakyat-rakyat berbangsa D Melayu Pemerintah' dalam Enakmen tersebut, dalam mentafsirkan s 6(i)(b) penekanan seharusnya ke atas perkataan 'rakyat-rakyat berbangsa Melayu' dan bukannya perkataan 'orang-orang'. Justeru itu, perkataan-perkataan 'orang-orang yang bukannya merupakan rakyat berbangsa Melayu Pemerintah tersebut' mestilah berniat untuk merujuk kepada orang-orang E sebenar yang bukannya merupakan rakyat-rakyat berbangsa Melayu Pemerintah (lihat ms 563E–G).

Lagipun, bagi tujuan Enakmen tersebut, s 2(a) mentafsirkan 'Melayu' sebagai orang yang di dalam golongan bangsa Melayu yang secara lazimnya berbahasa Melayu atau mana-mana bahasa F Melayu dan menganut agama Islam. Seksyen 2(b) seterusnya menyatakan bahawa setiap orang Malayu yang dilahirkan dalam Negeri Pahang akan dianggapkan sebagai rakyat Pemerintah Pahang. Dengan itu, dalam konteks s 2, orang buatan, bertentangan dengan orang sebenar, tidak mungkin merupakan seorang 'Melayu' dan menjadi rakyat Pemerintah Negeri Pahang. Ini adalah kerana G sebuah perbadanan tidak boleh berbahasa Melayu atau sebarang bahasa Melayu dan tidak boleh menganut agama Islam. Lagipun, oleh kerana ianya tidak mungkin telah dilahirkan di negeri Pahang, ia tidak boleh dianggap sebagai rakyat bukan berbangsa Melayu Pemerintah Negeri Pahang. Sekali lagi, memandangkan takrifan H nyata perkataan 'Melayu' di dalam peruntukan diandaikan dalam Enakmen tersebut, perkataan 'orang-orang' dalam ungkapan 'orang-orang yang bukannya merupakan rakyat-rakyat berbangsa Melayu Pemerintah tersebut' semestinya merujuk kepada orang-orang sebenar (lihat ms 563H–I dan 564A).

I Lagipun, perkataan 'rakyat-rakyat' dalam s 6(i)(b) hanya boleh merujuk kepada orang-orang sebenar kerana terdapatnya unsur 'taat setia' yang dikaitkan kepada orang-orang sebenar. Oleh kerana penekanan tersebut adalah ke atas perkataan 'rakyat-rakyat' Pemerintah, ianya munasabah untuk mentafsirkan bahawa

hanya orang-orang sebenar boleh memberikan taat setia kepada Pemerintah dan menikmati perlindungannya . A

Setelah mempertimbangkan Enakmen tersebut secara menyeluruh, terdapat pertentangan dalam konteks Enakmen tersebut yang menunjukkan bahawa perundangan telah menjangkakan bahawa perkataan 'orang-orang' dalam ungkapan 'orang-orang yang bukannya merupakan rakyat Melayu Pemerintah tersebut' dalam s 6(i)(b) merujuk kepada orang-orang sebenar sahaja dan tidak termasuk perbadanan. Dalam keadaan yang sedemikian, Mahkamah Rayuan salah dalam memutuskan bahawa perkataan 'orang-orang' dalam ungkapan 'orang-orang yang bukan merupakan rakyat berbangsa Melayu Pemerintah tersebut' dalam s 6(i)(b) Enakmen tersebut termasuk sebuah perbadanan (lihat ms 564B–E). B C

(5) (Oleh **Peh Swee Chin HMP**, menentang) Kaedah yang paling penting untuk mentafsirkan sebuah statut, atau mana-mana seksyen atau perkataan di dalamnya, adalah kaedah pendekatan mengikut tujuan. Kaedah pendekatan dengan tujuan tersebut yang mana adalah untuk memutuskan niat perundangan bermaksud, bagi tujuan kes ini, pendek kata, menjawab persoalan itu pertamanya, mengenai apakah hal perkara dan tujuan Enakmen tersebut; mengenai apakah peranan yang harus dimainkan oleh s 6(i)(b) Enakmen tersebut dan jika takrifan 'orang-orang' dalam Enakmen tafsiran diterimapakai, adakah ia akan didapati bertentangan dengan atau tak konsisten dengan objek Enakmen tersebut. Dalam kes ini, penghakiman Mahkamah Rayuan yang menentang tidak berurusan dengan kaedah utama mengetahui niat perundangan tersebut tetapi semata-mata mendapati maksud perkataan-perkataan 'orang-orang yang tidak merupakan rakyat-rakyat berbangsa Melayu' daripada perkataan-perkataan 'rakyat-rakyat Pemerintah' dan 'rakyat-rakyat berbangsa Melayu' dalam seksyen-seksyen lain Enakmen tersebut (lihat ms 552B–C dan 553A–B). D E F

(6) (Oleh **Peh Swee Chin HMP**) Kaedah tafsiran yang dikenali sebagai 'Noscitur a sociis', iaitu 'dikenali daripada sekutunya' tidak terpakai dalam kes ini. Ini adalah kerana perkataan 'orang-orang' dalam ungkapan 'orang-orang yang merupakan rakyat bukan berbangsa Melayu' dalam s 6(i)(b) Enakmen tersebut bukannya merupakan perkataan yang mempunyai maksud yang diragukan, dan juga bukan merupakan perkataan jika dimaksudkan secara sendirinya tidak boleh dikendalikan atau tidak bermaksud apa-apa dengan sendirinya. Perkataan 'orang-orang' telah ditakrifkan oleh sebuah statut, iaitu oleh Enakmen Tafsiran yang telah pun wujud ketika Enakmen tersebut sendiri digubal (lihat ms 553E–I). G H I

(7) (Oleh **Peh Swee Chin HMP**) Jika sesuatu perkataan dalam statut telah secara berkanunnya ditakrifkan walaupun sebagai tertakluk kepada sesuatu proviso, ianya akan memerlukan

dorongan yang amat luas untuk meminta mahkamah supaya menolak takrifan berkanun itu agar dapat memutuskan bahawa perkataan tersebut mempunyai maksud yang diragukan. Ianya hanya dapat dilihat sama ada takrifan berkanun perkataan 'orang-orang' adalah bertentangan dengan Enakmen tersebut, dengan hal perkaranya, atau dengan konteksnya, iaitu dengan perkataan-perkataan lain dalam mana-mana bahagian Enakmen tersebut. Bagi tujuan ini, Enakmen tersebut haruslah diteliti bagi memastikan niat perundangan dengan menerimapakai kaedah pendekatan dengan tujuan (lihat ms 554B–C).

Hal perkara Enakmen tersebut adalah cara urusan tanah-tanah Kesultanan Pemerintah, sementara tujuan Enakmen menerangkan maksudnya yang tersendiri, ianya mengenakan sekatan kepada urusan Pemerintah berhubung dengan tanah-tanah Kesultanan atau dalam erti kata lain, kesilapan yang ingin dielakkan oleh Enakmen tersebut adalah merupakan kebebasan menyeluruh Pemerintah tersebut berurusan dengan tanah-tanah Kesultanan itu atau lebih tepat lagi tanah-tanah yang mana sebelum Enakmen tersebut, Pemerintah merupakan tuan punya berdaftar. Memandangkan hal ini, ianya nyata bahawa pajakan kepada syarikat tersebut tidak mungkin tak konsisten dengan hal perkara Enakmen tersebut kerana ianya konsisten dengan cara Pemerintah hendaklah melaksanakan urusan-urusan tanah-tanah Kesultanan; ianya juga tidak mungkin tak konsisten dengan mana-mana perkataan atau seksyen Enakmen tersebut. Oleh yang demikian, asalkan Menteri Besar dan Pemerintah menandatangani pajakan itu, ianya tidak menjadi hal sama ada pajakan itu telah diberikan kepada rakyat-rakyat Pemerintah yang berbangsa Melayu atau sekumpulan bukan Melayu yang telah memperbadankan sebuah syarikat seperti syarikat tersebut (lihat ms 554E–I).]

Notes

For cases on lease of Crown/State land, see 8 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 1686–1690.

For cases on construction of statutes, see 11 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 1454–1578.

For cases on the purposive and contextual approach, see 11 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 1538–1563 and1463–1467.

For cases on Noscitur a sociis, see 11 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 1442–1446.

Cases referred to

Arnerich v The King [1942] NZLR 380 (refd)

Council of Civil Service Unions & Ors v Minister for the Civil Service [1985] 1 AC 374 (refd)

Dodwell & Co Ltd's Trust Deed, Re [1978] 8 All ER 738 (refd)

Faridah Begum bte Abdullah v Sultan Haji Ahmad Shah Al-Mustain Billah [1996] 1 MLJ 617 (refd)
Jeffreys v Boosey (1854) 4 HL Cas 815; 10 ER 681 (refd)
Johnstone v Pedlar [1921] 2 AC 262 (refd)
Kammins Ballrooms Co Ltd v Zenith Investment (Tarquay) Ltd [1970] 2 All ER 871 (refd)
Karpal Singh v Sultan of Selangor [1988] 1 MLJ 64 (distd)
Law Society v United Service Bureau, Ltd [1934] 1 KB 343 (folld)
Manson v Duke of Westminster & Ors [1981] 2 All ER 40 (refd)
Newspaper Proprietors' Agreement, Re [1964] 1 WLR 31 (refd)
Salomon v Salomon & Co Ltd [1897] AC 22 (refd)
St John Shipping Co v Joseph Rank Ltd [1957] 1 QB 267 (refd)
State Trading Corp of India Ltd v The Commercial Tax Officer & Ors AIR 1963 SC 1811 (refd)
VL Muror v R Happerseti (1875) 21 Wall 162; 22 Law Ed 627 (refd)
Yango Pastoral Co Pty v First Chicago Australia Ltd (1978)139 CLR 410 (refd)

Legislation referred to

Companies Act 1965
Federal Constitution art 181(2)
General Clauses Enactment of Pahang 1897 s 2, (xviii)
Interpretation Act 1889 [Eng]
Interpretation Acts of 1948 and 1967
Solicitors Act 1932 [Eng]
Sultanate Lands Enactment of Pahang 1919 (FMS Cap 221) ss 2(b), 4, 5, 6(i)(a), (b), (iii), (iv), 7, 8

Appeal from: Civil Appeal No C–01–6 of 1995 (Court of Appeal, Kuala Lumpur)

RR Sethu (*Ballendran Chong & Bodi*) for the appellant.
Chin Yew Meng (*Allen & Gledhill*) for the respodent.

Mohd Azmi FCJ: The crucial issue for determination in this appeal is the true construction of the word 'persons' within the context of the phrase 'persons not being Malay subjects of the said Ruler' enacted in s 6(i)(b) of the Sultanate Lands Enactment 1919 of Pahang (FMS Cap 221). The question is, does the word include or exclude an artificial person like the respondent company. The appellant says the word should be limited to natural persons, but the respondent argues otherwise. The answer depends in the main, having regard to the nature of the conflict of opinion not only between the tribunal constituted under s 7 of the said Enactment and the High Court, but also amongst members of the Court of Appeal themselves, on the applicability of s 2 of the General Clauses Enactment of Pahang 1897, (one of the predecessors of the present Interpretation Acts of 1948 and 1967) which has defined the word 'person' to mean not only natural but also artificial persons like a company incorporated under the Companies Act 1965. The proper and valid interpretation of this particular word

assumes great importance because on it would depend the validity of a 99 year lease of the Sultanate land granted on 1 July 1964 and on 28 May 1973 by the previous Sultan of Pahang to the respondent — Sathask Reality Sdn Bhd (hereinafter referred to as 'the company'). The Enactment, which came into force on 6 June 1919 employs the word 'persons', not only in s 6 (i)(b) but also in other related provisions of the legislation, and for ease of reference paras (a) and (b) of s 6(i) are now reproduced:

> The Sultanate lands or portions thereof may from time to time be leased —
>
> (a) by writing under the hand of the Ruler of the State to *Malay subjects of the said Ruler*, or
>
> (b) by writing under the hand of the Ruler of the State and of the Menteri Besar to *persons not being Malay subjects of the said Ruler*, ... (Emphasis added.)

It is not in dispute that any violation of or non-compliance with the restrictive conditions imposed by s 6(i)(b) in relation to a disposal or leasing of Sultanate land shall be null and void under the second limb of s 4 which provides that no portion of Sultanate lands shall 'except as provided in this Enactment, be leased or otherwise disposed of', *and* 'Every attempt to sell, transfer, mortgage, charge, encumber, *lease* or dispose of the Sultanate lands or any portion thereof in contravention of the provisions of this section shall be null and void and of no effect ...'.

The present appeal by the appellant (hereinafter referred to as 'the Kesultanan Pahang') which had succeeded in obtaining a ruling in its favour by the s 7 Tribunal, is against the order of the Court of Appeal dated 2 December 1996 (see [1997] 2 MLJ 701), in upholding by majority the order of High Court dated 19 December 1994 wherein the decision and orders of the tribunal were quashed by mandamus and certiorari in a proceeding for judicial review by the company. The tribunal had found that the lease to the company was in contravention of s 6(i)(b) and was therefore null and void on the ground that the word 'persons' in s 6(i)(b) must be confined only to natural persons and therefore there was no power by the previous Sultan of Pahang to grant the lease to the company. The tribunal also ordered certain refund of premium and compensation to be paid by the Kesultanan Pahang to the company. The grounds upon which the said orders of mandamus and certiorari were sought were as follows:

> (i) The decision that the said head lease dated 28 May 1973 is null and void was wrong in law. The tribunal erred in law in holding that the provisions 'persons not being Malay subjects' under s 6(i) of the Sultanate Lands Enactment 1919 meant only natural persons to the exclusion of incorporated companies.
>
> (ii) The tribunal misconducted itself by holding that the sub-leases created thereafter are null and void as such a decision is also wrong in law. The tribunal misconducted itself in holding that the sub-leases contravene s 6(iii) of the Sultanate Lands Enactment 1919 as this was not an issue raised by the Kesultanan Pahang in its claim.

Before the tribunal, the statement of claim of the Kesultanan Pahang were pleaded in eight paragraphs. It is of some assistance that paras (1) to (6) be reproduced below:

(1) By a purported lease superseding an earlier lease dated 28 May 1973, hereinafter referred to as the 'head lease') the plainttif, by the then Ruler of the State of Pahang, Sultan Abu Bakar Riayatuddin Mu'adzam Shah Ibni Al-Marhum Al-Mutasin Billah Al-Sultan Abdullah purported to execute as lessor, a lease over all that parcel of Sultanate Land held under CT No 5941, Lot No 4821, Mukim of Kuala Kuantan, in total acreage 21a 0r 15p, or thereabouts, (hereinafter referred to as 'the demised land') in favour of the defendant, for a period of ninety nine (99) year from 1 July 1964 to the 30 June 2063. The plaintiff will rely on the head lease at the hearing of this suit for the full terms and effect thereon.

(2) It was, inter alia, an express condition of the head lease, by cl (C) of the lessor's covenants, that the lessee shall not assign, sublease or part with the possession of the demised land without the written consent of the Menteri Besar of the State of Pahang.

(3) It is further an express provision of the law by virtue of ss 4 and 6, of the Sultanate Lands Enactment that Sultanate Land nor any portion thereof may be leased without the consent in writing under the hand of the Ruler of the State and of the Menteri Besar, to persons not being Malay subjects of the Ruler.

(4) The defendant, a company registered under the Companies Act 1965, is not a person nor a subject of the Ruler of the State.

(5) Further or in the alternative, the defendant has been in breach of cl (C) of the head lease and the provisions of ss 4 and 6 of the Sultanate Lands Enactment, as averred in paras (3) and (4) above, in that the defendant has purported to create trusts and subleases over the said land, without the appropriate corresponding written consent of the Menteri Besar.

(6) The full particulars of the breaches and the purported creation of the trusts and subleases are within the knowledge of the defendant.

Accordingly, on the pleading and submission of counsel before the tribunal, it was the case of Kesultanan Pahang that the company being a legal person incorporated under the Companies Act, did not qualify and therefore was statutorily prohibited from holding a lease of any Sultanate land under s 6(i)(b) because the company was neither a natural person nor a subject of the Ruler of Pahang. The purported lease was accordingly null and void ab initio. As regards the dispute over the validity of sub-leasing of the said land by the company as pleaded in para 5 of the statement of claim, this court is fortunately spared from dealing with it unnecessarily as both parties had agreed not to pursue the matter any further before the Court of Appeal. It seems obvious in this case that if the head lease were null and void, the sub-leases would follow suit. In its statement of defence, the company pleaded a general denial as contained in paras (3) and (4):

(3) The defendant makes no admission to paras (3) and (4) of the statement of claim. The defendant avers that the requisite consent was obtained.

(4) The defendant denies paras (5) and (6) of the statement of claim and puts the plaintiff to strict proof thereof.

In the company's amended statement of defence which was fully explained and amplified in its First Written Submission, the main thrust of the company's defence was that the disputed land was not a Sultanate land as

it did not appear in the schedule to the Enactment. There appears to be no attempt at all to challenge the Kesultanan Pahang's interpretation of s 6(i)(b) except to plead and argue that the Enactment did not apply and as such the tribunal was constituted in error. In the course of argument before us, my learned brothers and I were also initially concerned with the actual status of the land in dispute, but there can be no dispute now that the land comprised in the lease was indeed a Sultanate land, as gazetted under s 8 of the Enactment vide FMS Government Gazette No 4282 dated 14 July 1922. The company was clearly wrong in thinking that Sultanate land under the Enactment was limited only to those parcels of land that appear in the schedule to the Enactment, as s 8 expressly provides:

> The Menteri Besar may from time to time by notification published in the Gazette declare that any land described in such notification and not included in the Schedule hereto shall form part thereof, and from and after the date of the publication of such notification the land described therein shall come within the operation of this Enactment as if the same had been originally included in the said Schedule.

Just as I conclude that the challenge by the company on the status of the land is unfounded, I equally find unmaintainable the argument raised on behalf of the Kesultanan Pahang on lack of jurisdiction on the part of the High Court to entertain the company's application for judicial review on the basis of the ouster clause in s 7 of the Enactment. As this jurisdiction argument turned out to be a straight forward issue, the point shall be conveniently dealt with at a later stage of this judgment.

Turning now to the merits of the claim by the Kesultanan Pahang on the proper interpretation of the word 'persons' in s 6(i)(b) of the Enactment, on the basis of which the lease to the company should be held null and void, it is convenient to reproduce the following relevant parts as contained in paras (9) to (14) of the written submission placed before the tribunal by the Kesultanan's counsel:

> (9) In the Sultanate Lands Enactment 1919, in particular ss 4, 5, and 6, the repetitive use of the word 'subjects' strongly suggest that the intention of the legislature then was to narrowly confine the word 'subjects' to mean only natural persons and not extended to any body of persons, corporate or incorporate.
>
> (10) Sultanate lands is a special category of lands vested in the Ruler of the State of Pahang who has the inalienable right and power to grant occupation and leasing thereof to any of his subjects in accordance with the Sultanate Lands Enactment 1919. It would mean that only natural persons can be the subjects of the Ruler.
>
> (11) In the case of the Sultanate Lands Enactment 1919, the word 'persons' should not be construed as limited to the definition of 'persons' only but should be read and interpreted as including 'persons not being Malay subjects' and therefore does not include body of persons, corporate or incorporate. Pursuant to s 2(a) and (b) of the Sultanate Lands Enactment 1919, the word 'Malay' means a person belonging to any Malayan race who habitually speaks the Malay language or any Malayan language and professes the Muslim religion. By extension and analogy to the abovementioned section, the phrase 'persons not

being Malay subjects' shall be construed similarly to mean only 'natural persons'. The plaintiff's contention hereinabove is based on para 872 of 44 *Halsbury's Laws of England* which states that 'statutes are to be construed as a whole and that, for purposes of construction, the context of words which are to be construed includes not only the particular phrase or section in which they occur but also other parts of the statute'.

(12) In the case of *Re Dodwell & Co Ltd's Trust Deed* [1978] 3 All ER 738 at p 739, it was held: 'Having regard to the fact that the 1925 Act was a consolidating statute and that the original statute, namely s 1 of the Accumulations Act 1800, was by its phraseology and expression intended to be confined to natural persons, on the true construction of s 164(1), a corporate settlor was not a "person", within s 164 ...' and at p 743, a decision of Street J and he had to deal in substance with s 164 in the guise of s 31 of the New South Wales Conveyancing Act 1919. Subsection (1) there started off:

> No person (in this section called a settlor) shall settle or dispose of any property so that the income thereof shall be wholly or partially accumulated: (a) for any longer period than — (i) the life of the settlor; or (ii) twenty-one years from the death of the settlor; or (iii) the minority of any person who shall be living at the death of the settlor ... .

That of course made it very much easier for him, since the 'person' was directly equated with settler, and the settler was directly counted with life and death, to come to the conclusion that 'person' in that subsection of the Conveyancing Act 1919 meant an individual and not a notional person.

(13) In Maxwell *Interpretation of Statutes* (11th Ed) at p 77, it was put forth that 'Enactments relating to 'persons' have been variously understood, according to the circumstances in which the word was used'. The operative word used in the interpretation of the word person here is the phrase 'circumstances in which the word persons was used'. It is submitted that in the Sultanate Lands Enactment 1919, the circumstance in the case of the word 'persons' is in relation to subjects and subjects can only mean natural persons.

(14) The plaintiff therefore humbly submits that the head lease granted to the defendant a company incorporated pursuant to the Companies Act 1965, is void ab initio in contravention of provisions of the Sultanate Lands Enactment 1919. It follows therefore that if the head lease is deemed to be void ab initio all subleases created pursuant to the head lease will be deemed to be void as a consequence thereof.

In reply to the above submission, the relevant part of the company's written argument on the applicability of the interpretation and general clauses legislation was as follows:

> It is now suggested that the rule of interpretation is that every Enactment must be read as a whole and by that process no lease could be granted to an unnatural person, ie to a limited company. It is with respect that I must say that such an approach to be so suggested to be adopted is entirely erroneous. With respect, I beg to refer to Craies on *Statute Law* pp 377–378 which is enclosed herewith. What the defendant is saying is that in the instant case the manner to interpret the Enactment is to employ s 6 of the said Enactment and to read it in conjunction with the written law of the land, viz the

A Interpretation and General Clauses Act in that the term 'person' must also necessarily mean a body corporate. Not to read it in this manner will bring about an erroneous approach as it will exclude the provision of a written law, viz the Interpretation and General Clauses Act 1948.

I pause here to observe that the legal stand taken by the company was B apparently based on the virtually automatic and mandatory application of the interpretation legislation to every other specific statute in all circumstances without any exception. As such (so it was argued), the definition of the word 'person' in s 2 of the General Clauses Enactment 1897, and s 2 of the Interpretation Acts 1948 and 1967 should be applied without further ado to the term 'persons not being Malay subjects of the C said Ruler,' in s 6(i)(b) of the Enactment so that the word 'person' must be construed to include both natural and artificial persons. It was on this basis that the company had urged the tribunal to hold that there was statutory power to grant a lease of Sultanate land to both individuals and incorporated companies, notwithstanding any contrary intention of the D legislature in the Sultanate Lands Enactment. Section 2(xviii) of the General Clauses Enactment 1897 provides:

> In this Enactment and in every written law whether made before or after the commencement of this Enactment, unless there be something repugnant in the subject or context —
>
> E (xviii) 'Person' shall include any company or association or body of individuals whether incorporated or not.

It is interesting to note that pp 377–378 of Craies on *Statute Law* relied upon by learned counsel for the company do not in fact support the company's argument on the scope of applicability of the definition clause in the Interpretation Acts to other specific statutes such as the Enactment F under consideration. At pp 377–378, the learned author was dealing with the subject of 'Repeal of special by general enactment', and the general maxim of 'Generalia specialibus non derogant', ie the general provisions will not abrogate special provisions. In short, if the prior General Clauses Enactment 1897 and the subsequent Sultanate Land Enactment 1919 are G repugnant to each other on the meaning of the word 'persons', the general provisions could not abrogate the special provision. The position is apparently the same where the general definition of the word enacted in the subsequent Interpretation Acts 1948 and 1967 are inconsistent or repugnant to the 1919 legislation. In my view, the learned counsel for the company would have been better advised if he had referred to p 216 of H *Craies* under the subject of 'Interpretation clause not necessarily applicable on every occasion when word interpreted is used in Act'. Under this heading, the learned author has this to say:

> Another important rule with regard to the effect of an interpretation clause is, that an interpretation clause is not to be taken as substituting one set of I words for another, or as strictly defining what the meaning of a term must be under *all* circumstances, but rather as declaring what may be comprehended within the term where the circumstances require that it should be so comprehended. If, therefore, an interpretation clause gives an extended meaning to a word, it does not follow as a matter of course that, if that word is used more than once in the Act, it is on each occasion used

in the extended meaning, and it may be always a matter of argument whether or not the interpretation clause is to apply to the word as used in the particular clause of the Act which is under consideration, RV Cambridgeshire JJ (1838) A & E 480; *London School Board v Jackson* (1881) 7 QBD 502 at p 504 ('parent'), Coleridge J; cf pp 214–215, above. 'It appears to me,' said Lord Selborne in *Meux v Jacobs* (1875) LR 7 HL 481 at p 493, 'that the interpretation clause does no more than say that, where you find these words in the Act, they shall, unless there be something repugnant in the context or in the sense, include fixtures'.

So the words 'any person' in the Solicitors Act 1932 were held not to include a body corporate but only such person as could become a solicitor in spite of s 2 of the Interpretation Act which enacts that 'person' shall include a body corporate 'unless a contrary intention appears': *Law Society v United Service Bureau* [1934] 1 KB 343. Cf *Chesterman v Federal Commissioner of Taxation* [1926] AC 128. See now the Solicitors Act 1957 s 22.

The tribunal rejected the company's argument and in its findings dated 17 December 1991, it gave the following reasons, after quoting the provisions of s 6(i)(a) and (b):

The word 'subjects' appearing in s 6(i)(b) (as well as sub-s (i)(a)) to my mind restrict the meaning of the word 'persons' to mean only natural persons who are not Malay subjects of the Ruler and thus, as the lessee, Sathask Realty Sdn Bhd is a company, it cannot be holding a lease over any Sultanate land as it is not a natural person, and thus the granting of the head lease to Sathask Realty Sdn Bhd is ultra vires.

Since the head lease is void ab initio the sub-leases created thereafter are accordingly void and furthermore, the creation of the sub-leases also contravenes s 6(iii) of the Sultanate Lands Enactment 1919 which provides that no right or interest in any lease of Sultanate lands or any portion of it can be leased without the written permission of the Ruler and the Menteri Besar and based on the documentary evidence produced in this claim, I find that there is no evidence to show that the written permission of the then Menteri Besar was ever obtained when the sub-leases were created.

Consequently, since the head lease has been entered into by both parties on a mistake of law, I find that it would be just and equitable that the claimant pay back the portion of the premium which corresponds to the unexpired term of the lease, and also pay compensation for whatever improvement the lessee that is Sathask Realty Sdn Bhd, can prove to have been effected by him to the land.

It is also my finding that there should be no order as to costs.

It was under these circumstances that the company being dissatisfied with the fate of their lease, had applied for judicial review of the tribunal's decision in the High Court. Arifin Zakaria J held that despite the ouster clause in s 7 of the Enactment, the High Court had jurisdiction to interfere by a judicial review if the tribunal's interpretation of s 6(i)(b) was wrong in law. It was his Lordship's conclusion that the tribunal had committed a serious error of law which was apparent on the face of the record and consequently his Lordship issued an order of certiorari to quash the order of the tribunal with costs. In applying the interpretation legislation, the

A learned judge simply found no repugnancy or inconsistency with the provisions of the Enactment, without assigning any judicial reason, particularly as to how an artificial person could ever be a subject of the Ruler of Pahang and as such his Lordship held that the word 'persons' does include legal persons. In doing so, his Lordship appeared to have give B great emphasis on the word 'persons' in isolation without much regard to the circumstances in which the word was used, particularly to the qualifying term 'Malay subjects of the said Ruler' and 'not being Malay subjects of the said Ruler' used by the legislature in sub-ss (i)(a) and (i)(b) of s 6, when he said:

> C ... The respondents on the other hand argued that it should be confined to natural person. This question is crucial to the applicant herein, being a company incorporated under the Companies Act 1965. The applicant contended that the expression 'persons' should be given the meaning as defined in the Part II of Interpretation Acts 1948 and 1967 which defines 'person' as 'includes any body of persons, corporate or unincorporate'. D Both the respondents urged the court to adopt the narrower meaning of the word in the context of the provisions of the Enactment. It is contended on their behalf that, in the Enactment, in particular ss 4, 5 and 6 the repetitive use of the word 'subject' strongly suggest that the intention of the legislature was to confine the meaning of the expression 'persons' to only natural person and not to a body of persons, corporate or unincorporate.
>
> E As stated in Part II of the Interpretation Acts 1948 and 1967, the words and phrases as defined in the Acts shall have the meanings assigned to them unless there is something in the subject or context inconsistent with such construction or unless it is otherwise defined by a given statute. Therefore, the question one should ask in this case is whether therein is anything repugnant or inconsistent within the context of the Enactment which militates F against the adoption of the meaning as provided in Part II of Interpretation Acts 1948 and 1967. With respect I find none. On the contrary, in the context of s 6 of the Enactment, I am of the view that the expression 'persons' should be given the broader meaning as defined in the Interpretation Acts 1948 and 1967. For it is fallacious to say that the word 'subject' appearing in ss 4, 5, and 6 has the effect of narrowing the meaning of the expression 'persons' as found in s 6(i)(b) of the Enactment. This becomes G apparent if one were to ask the question: 'Is a body of persons, corporate or unincorporate, a person not being a Malay subject of the Ruler of Pahang?'. I am sure the answer to that is in the affirmative. That being so, how could one then say that the expression 'persons' in the said s 6(i)(b) of the Enactment does not include a body corporate.
>
> H As for the argument of the repsondents that it is the intention of the legislature to restrict the leasing of Sultanate lands to natural persons so that only natural persons could derive benefit from leases of such land, my short answer to that is: if it so intended, the legislature could have expressly provided to that effect in clear words. On the contrary, the legislature had chosen to use the general expression 'persons' in the Enactment without I assigning any special meaning to it, therefore, in the circumstances, the meaning assigned to it in Part II of the Interpretation Acts 1948 and 1967 should apply.

It is important to appreciate that in its ordinary signification the word 'person' must necessarily mean a natural person. It is only under s 2 of the

interpretation legislation that its meaning has been extended to include artificial person. With respect, I am of the view that if the learned judge had considered the circumstances in which the word 'person' was used in the context of s 6(i) he would have discovered the restricted meaning of the word assigned and intended by the legislature. His Lordship ought to consider in greater depth the repugnancy or inconsistency proviso in s 2 of the interpretation legislation before insisting on the application of the general definition of the word so as to avoid the pitfall of making such application mandatory as if it was without any proviso. It is not at all apparent from the reasoning of his Lordship why it is fallacious to conclude that the word 'subject' appearing in ss 4, 5, and 6 should not by its very nature be intended by the legislature to exclude artificial or non-living persons. Further, his Lordship was begging and avoiding the crucial question of whether a legal person could ever be the subject of the Ruler of Pahang, when he posed himself the question 'Is a body of persons, corporate or unincorporate, a person not being a Malay subject of the Ruler of Pahang?' The answer could only be properly determined if the learned judge had taken into account the clear classification intended by the legislature between persons who are 'Malay subjects' of the Ruler of Pahang under s 6(i)(a) and 'persons not being Malay subjects of the said Ruler' under s 6(i)(b). In my opinion, the failure to appreciate and apply this vital legislative classification would result in the learned judge not taking into account a very relevant matter into consideration when interpreting s 6(i)(b). It is crucial to observe that the case for the Kesultanan Pahang as pleaded in para 4 of the statement of claim mainly rests on the basis that the company was neither a living person nor a subject of the Ruler of the State. Thus, the Kesultanan Pahang's attack on the validity of the lease was two-pronged, and unless the learned judge had first considered and satisfied himself that a company was capable of being a subject of the Ruler of the State, so as to bring itself within either the classification (a) or (b) of s 6(i), the interpretation of the word 'persons' alone under (b), without regard to the classification intended by the legislature, and without taking into account the context in which the word was used, would be erroneous and irrational.

When the matter came up before the Court of Appeal, both Mahadev Shankar and Mokhtar Sidin JJCA fell into the same error by sticking almost entirely on the word 'persons' in s 6(i)(b) as the cornerstone of their interpretation without serious regard to the context in which the word was used, and like the learned judge of the High Court, they upheld the argument that sub-s (b) included a company and not restricted to natural persons, by simply applying the general definition of the word 'persons' under s 2 of the General Clauses Enactment of Pahang which like its successor, the Interpretation Acts 1948 and 1967 define the word 'persons' to include legal or artificial persons. Mahadev Shankar JCA went on so far as to rephrase the words of the legislature by simply classifying leasees of Sultanate lands as those under para (a) Malay subjects of the Ruler and under (b) others, ie everybody else including companies irrespective of whether they are subjects of the Ruler of Pahang or not. Thus, at p 5 of his judgment (see [1997] 2 MLJ 701 at pp 707I–708B), his

Lordship purportedly relied on the purposive principle of interpretation when he said:

> The Enactment clearly recognized that the Ruler had power to lease Sultanate lands *both* to his Malay subjects *and* to others.
>
> Sections 5 and 6 of the Enactment must of course be construed together. By s 6(i)(a), the power of the Ruler of the State to lease Sultanate lands to his Malay subjects was unconditional and absolute. The restrictions only came into play if the lease was to be to a *person* who was not a Malay subject of the Ruler. (Emphasis added.)

The State legislature never used the word 'others' in sub-s 6(i)(b). As such, it is clearly wrong for his Lordship to substitute the legislative words 'persons not being Malay subjects of the said Ruler' with the single word 'others' so as to widen the scope of the subsection to include artificial persons. Irrespective of whether there is any express provision or not, it is trite law that the general definition of particular words in any interpretation legislation cannot be automatically applied for the interpretation of other statutes if there is something in the subject or context of the other statutes which are repugnant or inconsistent with such construction. In this case, to determine whether there is a repugnancy or inconsistency, the majority of the Court of Appeal ought to have taken into consideration more seriously all relevant facts before satisfying themselves that the general meaning of the word 'persons' in the interpretation legislation has not been displaced by the repugnancy rule. Firstly, where the words 'subjects' and 'Ruler' are repeatedly used in the manner employed by the legislature in this particular Enactment, the circumstances in which the word 'persons' is used in relation to 'subject' and 'Ruler' would surely mean natural persons. In the absence of express statutory provision to the contrary, it is difficult to imagine how the Ruler of Pahang who must necessarily be a natural person, can have artificial persons as His Highness subjects.

Secondly, the Sultanate Lands Enactment is expressly enacted as 'An Enactment to vest certain lands in the Ruler of the State of Pahang and to regulate the occupation and leasing thereof'. The definition of 'Malay' in s 2 includes non-Malays provided they habitually speak the Malay language or any Malayan language and also profess the Muslim religion, and if they were born in Pahang, they should also be deemed to be the subjects of the Ruler. Section 2 provides:

> ...
>
> (a) 'Malay' means a person belonging to any Malayan race who habitually speaks the Malay language or any Malayan language and professes the Moslem religion;
>
> (b) every Malay born within the State shall be deemed to be a subject of the Ruler of the State.

Thus when s 6(i)(a) and (b) speak of 'Malay subjects' or 'not being Malay subjects' they must be interpreted as referring only to natural persons, as a company like the respondent, cannot possibly speak the Malay or any Malayan language, or profess the Muslim religion, let alone be born within the State of Pahang. In the circumstances, it is repugnant and inconsistent

with the Enactment to stick to the general definition in the interpretation legislation for the purpose of extending the meaning of the word 'persons' used in s 6(i)(b) to legal or juristic persons. There is nothing perhaps to prevent the State legislature from enacting provision in the Enactment enabling companies by legal fiction to be a Malay or non-Malay subject of the Ruler along similar line as in s 17 of the Malay Reservations Enactment 1933, if it were the intention of the legislature that the approving authorities under s 6(i)(a) and (b) should be empowered to grant a lease of Sultanate land to companies incorporated under the Companies Act 1965. Thus, it is not surprising that Abdul Malek Ahmad JCA, the sole dissenting judge in the court below found it rather obvious that by virtue of the definition 'Malay' in s 2 of the Enactment, the word 'persons' who have to be subjects of the Ruler must be restricted to natural persons. On the important issue of repugnancy, his Lordship went on to add at p 15 of his judgment (see [1997] 2 MLJ 701 at p 716C–F):

> ... Going then to ss 5 and 6(i)(b) of the Enactment where the respective categories of 'no person not being a Malay subject' and 'persons not being Malay subjects' appear, can we certainly and convincingly conclude that it must refer to bodies corporate as well? I find that this is not the correct approach to construe a statute. I was more inclined, therefore, to hold that in view of the provisions in the Enactment read as a whole, a 'person' and 'subject' there must mean a natural person.
>
> All the definition sections in the interpretation laws, irrespective when they were enacted, start off with a proviso clause and the definition certainly cannot apply when the statute being interpreted read in its proper context indicate otherwise as in this case. Hence, even s 2 of the General Clauses Enactment 1897 begins with 'In this Enactment and in every written law whether made before or after the commencement of this Enactment, unless there be something repugnant in the subject or context'.
>
> To say that 'person' in the Enactment includes a body corporate would certainly be repugnant or contrary to what the statute intended and I would, therefore, with respect hold that the word 'person' and 'subject' in the Enactment can and must only mean a natural person.

By contrast, Mokhtar Sidin JCA despite his scrutiny of s 6 had this to say in support of Mahadev Shankar JCA (see [1997] 2 MLJ 701 at p 722C–F):

> ... The appellant contended that s 6 should be read as a whole together with the words 'Malay subjects of the said Ruler'. When this is done, the word 'person' in s 6(i)(b) can only mean a natural person and thus not applicable to the respondent being a body corporate. I have scrutinized s 6 and in my view the natural meaning of s 6(i) of the Enactment envisages that the Ruler could lease or sell the Sultanate lands to two categories of people. The first under s 6(i)(a) whereby the Ruler by his writing, without the consent of the Menteri Besar can lease or sell any of the lands to the Malay subjects of his. Under s 6 (i)(b), the Ruler of the State by writing could lease his land to any other person (including a corporation) not being a Malay subject of his but it must be with the consent of the Menteri Besar. To read it otherwise would not give the required effect to that section. Thus the late Sultan had done exactly what s 6(i)(b) required him to do in that he leased the said land to the respondent (a corporation) by writing under his hand as Ruler of the State and of the Menteri Besar who gave his consent by signing the lease

instrument. As such I find that there is no merit in the second argument put up by the appellant.

From the above reasoning, clearly the learned appellate judge was referring to the two categories of approving authorities for the grant of leases of Sultanate lands in Pahang, under s 6(i)(a) and (b), but such classification is not at all relevant for the purpose of determining the intention of the legislature to depart from the general meaning of the word 'person' in the interpretation legislation. What his Lordship ought to have considered for the purpose of the present dispute is the more relevant classification of persons qualified to hold leases under the various provisions of the Enactment. Had he done so, he would have found that the classification intended by the legislature is in relation to the two categories of the State subjects viz, the Ruler's Malay subjects and non-Malay subjects, whereby in the case of the latter, the approval of the Menteri Besar is required in addition to that of the Ruler. Emphasizing the wrong legislative classification as the basis of the interpretation of the word 'persons' could only be attributed to a confusion between the two distinct sets of classification. If the legislature had intended to make the classification as suggested by the learned judge, it could easily have done so by using the words 'any other persons' (as wrongly assumed by Mahadev Shankar JCA) in the second category under s 6(i)(b) instead of 'persons not being Malay subjects of the said Ruler'. It would then be at least possible to bring in the aid of the State of Pahang Interpretation Enactment 1897 to extend the meaning of the word 'persons' to include a corporation.

In my view, had the majority in the Court of Appeal given a serious consideration and scrutiny to the circumstance in which the word 'persons' was used and in particular to the qualifying words used by the Legislature, in the phrase 'subject of the Ruler' in s 6 which also appears in ss 4 and 5, and as well as the important classification of Malay and non-Malay subjects, and had they considered the object and purpose of the Enactment on the subject of leasing of Sultanate lands, they would have found that the legislature intended to limit the word 'persons' to only natural persons, and that as far as the power of the Ruler to lease or to grant temporary occupation under the Enactment is concerned, it is deliberately not as liberal as the Ruler's power to sell, transfer, mortgage or charge. Unfortunately, the words 'subject' and 'Ruler' repeatedly used in the legislation never attracted their Lordships' fullest attention to enable them to consider whether it is at all possible for a company to be a subject of the Ruler of Pahang, let alone to be a Malay subject or non-Malay subject of the Ruler. The omission to do so is fatal to the court's power to interfere by judicial review, and would adversely affect their finding that the tribunal had committed a serious error of law apparent on the face of the record when there was actually none in existence.

The majority judgment's main basis for adopting the liberal interpretation of s 6 would appear to be based on the argument that since the Enactment did not impose any restriction on the power of the Ruler to sell Sultanate lands, ipso factor the legislature must also have intended to be liberal in its power to grant leases, particularly to companies for purpose

of development. I do not think such argument can be supported by ss 4 or 5 of the Enactment in view of the clear legislative intention to draw a distinction between the power of the Ruler on the one hand to sell, transfer, mortgage and charge, and on the other the power to grant not only leases but also temporary occupation of such lands. Sections 4 and 5 provide:

> Dealings restricted
>
> 4 No portion of the Sultanate lands shall, except by an instrument under the hand of the Ruler of the State counter-signed in token of his assent, by the Menteri Besar be sold, transferred, mortgaged, charged, or otherwise encumbered, and no portion thereof shall, except as provided in this Enactment, be leased or otherwise disposed of. *Every attempt to sell, transfer, mortgage, charge, encumber, lease, or dispose of the Sultanate lands or any portion thereof in contravention of the provisions of this section shall be null and void and of no effect.*
>
> Provided that nothing in this section shall be deemed to prohibit the temporary occupation of portions of the Sultanate lands by Malay subjects of the Ruler of the State with the consent of the said Ruler. (Emphasis added.)
>
> Occupation by other than Malay subjects
>
> 5 (i) No person not being a Malay subject of the Ruler of the State shall occupy any portion of the Sultanate lands unless he hold a lease or other written authority in that behalf signed by the Ruler of the State and by the Menteri Besar.
>
> (ii) Any person who occupies any portion of the Sultanate lands otherwise than in accordance with the provisions of subsection (i) of this section shall be guilty of an offence and shall on conviction before a magistrate be liable to a fine of one hundred dollars and to a further fine of ten dollars for every day or part of a day during which the offence continues after such conviction.

Although the Enactment conveys the impression of liberality given to the Ruler to deal with Sultanate lands, the proviso to s 4 prohibits even the temporary occupation of portions of the Sultanate land except by 'Malay subjects of the Ruler'. As alluded to earlier, a classification is thus made almost throughout the Enactment between Malay subjects and non-Malay subjects of the Ruler, not only in the granting of leases under s 6 but also in the granting of temporary occupation licence. The same classification is repeated in s 5(i), the breach of which constitutes an offence punishable by s 5(ii). Even though no such classification is expressly made with regard to the sale of such lands, s 4 requires the sale instrument under the hand of the Ruler to be counter-signed by the Menteri Besar. Further, even if it were true to say that the legislature intended to be liberal in the sale of such land, housing developers like the respondent company, ought in the interest of the purchasers, to effect an outright purchase of the property instead of mere long lease, as if akin to the state alienating state land to a company under the National Land Code 1965. For one thing, unless the State Government decides to degazette the land as Sultanate land, (which is most unlikely in view of the present dispute) innocent and unsuspecting

purchasers and persons dealing with such property as sub-leasees would continue to be saddled with the encumbrance and restriction in interest imposed over the lands by the Sultanate Lands Enactment. In this respect, it might be better for everyone concerned for the illegality of the leases be exposed now rather than in the remote future.

For purpose of occupation of Sultanate lands or portions thereof by non-Malay subjects, the only method is by way of lease under s 6 or other written authority. Section 6(i) must be intended to maintain the same classification between Malay subjects and non-Malay subjects. As indicated earlier on, unless and until the fundamental question of the eligibility of a company to be a subject of the Ruler is properly dealt with, the interpretation of s 6(i)(b) founded purely on the word 'persons' alone without reference to the qualifying words, 'not being Malay subjects of the said Ruler', would be misleading and wrong in law. The legislative classification under s 6(i)(a) and (b) is clearly between Malay subjects and non-Malay subjects of the Ruler of Pahang, the importance of which totally escaped the attention of the High Court and the majority in the Court of Appeal. If the Sathask Realty Sdn Bhd by its very nature is legally incapable of being a subject of the Ruler, or incapable of being a Malay or non-Malay individual, how could it be argued that the company could come under s 6 at all short of ignoring the repugnancy principle inherent in all interpretation legislation? In the context of the whole Enactment, particularly the qualifying words in s 6(i)(b), it would be against the principle of interpretation of statutes to insist on the application of the general meaning of the word 'persons' in the interpretation legislations notwithstanding the contrary intention of the legislature to displace such meaning by the Enactment under the repugnancy and inconsistency principle inherent in all such general as opposed to specific legislations. There can be no doubt that the general and liberal meaning of the word 'persons' as defined by s 2 of the interpretation legislation has no application in s 6(i)(b) of the Sultanate Lands Enactment, in view of the repeated use by the State legislature of the words 'subject' and 'Ruler', and the legislative classification of Malay subjects and non-Malay subjects of the Ruler throughout the Enactment.

In his submission, Mr RR Sethu for the Kesultanan Pahang has admirably dealt with the meaning of the words 'citizenship' and 'subject' as opposed to 'nationality'. He reminded this court that the terms 'subject, inhabitant and citizen' must mean a natural person as only such person is capable of owing an allegiance.

In *Arnerich v The King* [1942] NZLR 380 (CA), it was held that anyone who, for the time being owes allegiance to the sovereign and enjoys his protection, is fairly described as a subject, so long as the duty of allegiance and the right to protection exist. In that case, Callan, J referred to the case of *Jeffreys v Boosey* (1854) 4 HL Cas 815; 10 ER 681 where the Lord Chancellor (Lord Cranworth) having used the word 'subjects' in his judgment, then interpreted it as including resident friendly aliens. The Lord Chancellor actual language was, 'when I say that the legislature must prima facie be taken to legislate only for its own subjects, I must be taken to include under the word "subjects" all persons who are within the

Queen's dominion, and thus owe to her a temporary allegiance'. In *Johnstone v Pedlar* [1921] 2 AC 262, Viscount Finlay said (at p 272): A

> ... An alien in British territory is normally regarded as a British subject for the time being in virtue of local allegiance ... .

In *State Trading Corp of India Ltd v The Commercial Tax Officer & Ors* AIR 1963 SC 1811, it was held by the Indian Supreme Court that 'citizens' in art 19 of the Constitution of India can only include natural persons and not juristic persons like corporation. At p 1821, Sinha CJ said: B

> In view of what has been said above, it is not necessary to refer to the controversy as to whether there were any citizens of India before the advent of the Constitution. It seems to us, in view of what we have said already as to the distinction between citizenship and nationality, that corporations may have nationality in accordance with the country of their incorporation; but that does not necessarily confer citizenship on them. C

The distinction between citizenship and nationality received the support of Hidayatullah J at p 1823, who stated his opinion in para 31: D

> Both the arguments involve fallacies. The first assumes that 'nationality' of corporations and citizenship of natural persons are the same concepts and caps it with the fallacy of ignorantio elenchi which in English is called the fallacy of irrelevant conclusion because instead of proving that corporations are citizens, it is sought to be shown that they ought to be citizens for the remedy is so good and effective. The second involves the fallacy of petitio principii because it tends to beg the question and bounds a conclusion on a basis that as much needs to be proved as the conclusion itself. In my opinion, the State Trading Corporation cannot be said to be a citizen either by itself or by taking it as the aggregate of citizens, that nationality of a corporation is a different concept not to be confused with citizenship of natural persons, that the word 'citizen' in art 19(1) sub-cll (f) and (g) refers to a natural person, that State Trading Corporation is really a Department of Government behind the corporate veil and that for these reasons the two questions must be answered in favour of the objectors. I shall now make good these conclusions with reasons. E F

To constitute an allegiance, there must be an element of a personal bond and as such, I respectfully accept the legal distinction between the concept of nationality on the one hand and citizenship or status like subject of a Ruler on the other. This is more or less conceded by Mr Chin Yew Meng for the company. In the result, I am of the view that Mahadev Shankar JCA who wrote the leading judgment for the majority was glaringly in error when he seemed to suggest that companies incorporated under the Companies Act 1965 like the respondent company, are capable of being subjects of the Ruler of Pahang when he equated the nationality of corporations with citizenship or subjects, when he arrived at the following conclusion in disregard of all recognized authorities cited in *Halsbury's Law of England* (see [1997] 2 MLJ 701 at p 708G–I): G H I

> The passages from *Halsbury's* were quoted to support the contention that the word 'subject' of necessity implied living persons only. With the greatest respect, this cannot be right. There are numerous authorities which have

A decided that the legal personality of a company has a nationality. (See Pennington's *Company Law* (6th Ed) pp 46–48). Where required, the court will regard the company as an association of persons. Indeed the world we live in is now pervaded by multi-national companies (See *Modern Company Law* by LCB Gower (6th Ed) p 61). These entities by law have rights and liabilities with regard to landed property which are co-extensive with that
B of individuals.

With respect, the above statement is based on the questionable legal premise that nationality and citizenship are synonymous. The concept of subject of the Ruler has existed in Pahang even before all the Malay States, which came together and formed part of the present Federation of Malaysia,
C became part of the then British Empire. So it is relevant to look briefly into the British Nationality and Status of Aliens Act 1914 as amended in 1943, and as well as the British Nationality Act 1948, enacted in anticipation of the breaking up of the Empire. For our purpose, it is sufficient to quote once again Hidayatullah J at p 1828 of *State Trading Corp of India*'s case:

D The statutes on the subject are collected by Clive Parry in his *Nationality and Citizenship Laws* and need not be referred to in detail here as we are really not concerned with them except as the background of our laws. In 1914, the British Nationality and Status of Aliens Act 1914 was passed which was later amended in 1943. The definition of a natural-born British subject in that Act shows the classes of persons who were regarded as
E British subjects by birth. The word 'subject' need not be considered in a sinister sense. It only meant a citizen though the feudal concept of subjection seemed to persist in the world. The Act of 1914 as amended in 1943 made one significant departure and it was the limitation of British nationality on birth to the first foreign-born generation. The Act of 1914 as amended in 1943 ruled the field till the British Nationality Act 1948 was passed. By that
F time, the problem of British-born subjects underwent a cataclysmic change along with the changes in the British Empire. A new conception, namely that of Commonwealth citizenship came to be recognized but it was obvious that the members of the Commonwealth countries were about to enact their own citizenship and nationality laws. The Act of 1948 did two things with which we are concerned. It laid dawn rules by which the status of British
G subjects was conferred on persons who were citizens of certain countries named in the Act. India was one of such countries. This new citizenship was Commonwealth citizenship.

In the same Supreme Court of India case, Shah J quoted the observation of Waite CJ in *VL Muror v R Happerseti* (1875) 21 Wall 162; 22 Law Ed 627:

H

There cannot be a nation without a people. The very idea of a political community, such as a nation is, implies an association of persons for the promotion of their general welfare. Each one of the persons associated becomes a member of the nation formed by the association. He owes it allegiance and is entitled to its protection. Allegiance, and protection are, in
I this connection, reciprocal obligations. The one is a compensation for the other; allegiance for protection and protection for allegiance.

For convenience, it has been found necessary to give a name to this membership. The object is to designate by a title the person and the relation he bears to the nation. For this purpose, the words 'subject', 'inhabitant'

> and 'citizen' have been used, and the choice between them is sometimes made to deposit upon the form of the Government. Citizen is now more commonly employed, however, and as it has been considered, better suited to the description of one living under a republican government, as it was adopted by nearly all of the States upon their separation from Great Britain, and was afterwards adopted in the Articles of Confederation and in the Constitution of the United States. When used in this sense it is understood as conveying the idea of membership of a nation, and nothing more.

Nowadays, although under International Law, the status of subjects of Pahang may have little significance internationally, the Municipal Law of this country, particularly State Laws such as the Sultanate Lands Enactment, do give certain rights to the subjects of each state forming the Federation. In return for such rights, the obligation of the subjects is to give local allegiance to the Ruler of the State. Thus, Hidayatullah J at p 1832 laid out a clear distinction between the nationality of corporations and the subject or citizenship of individual persons:

> There may be some analogy between an individual and a corporation but as Mr Vaughan Williams said (49 LQR 334) in an article which has been of great assistance to me, it is not 'necessary to ride the analogy to death'. The English Law was summed up by Mervyn Jones (*British Nationality Law* (Revised Ed)):
>
> > 'A corporation is a judicial person, but could not be a subject at common law, because allegiance, being essentially a personal bond, was a conception limited in its application to individuals. Nor have corporations been recognized as statutory British subjects or as citizens of the United Kingdom and colonies.'
>
> Oppenheim also points out (*International Law*, Lauterpacht Edition) p 642 n 3 —
>
> > 'The nationality of corporations is mainly a matter for Private International Law, and considerations of public policy have a decisive influence upon the attitude of every State with regard to it.'
>
> Citizenship depends upon Municipal Law and the same learned author says (ibid p 643):
>
> > 'It is not for International Law but for Municipal Law to determine, who is, and who is not, to be considered a subject.'
>
> Hyde in his *International Law* Vol (2nd Ed) p 1066 also says:
>
> > 'Citizenship as distinct from nationality, as a creature solely of domestic law. It refers to rights which a State sees fit to confer upon certain individuals who are also its nationals.'

I am therefore of the opinion that the circumstances in which the word 'persons' is used in the Enactment and particularly in s 6(i)(b) in connection with the words 'subject' and 'Ruler' must mean only natural persons and cannot be intended by the legislature to include juristic or legal person like a company, for the simple reason that a legal person cannot possibly be a subject of any Ruler as it is incapable of giving allegiance however local or temporary. In the circumstance, the phrase 'persons not being Malay subjects of the Ruler' in s 6(i)(b) are limited to natural persons, and so it cannot include the respondent company.

Short of being repetitive, the word 'persons' in s 6(i)(b) is not used by the legislature without qualification. It is expressly qualified by the term 'not being Malay subjects of the Ruler' which can only mean living non-Malay subjects, having regard to the definition of the word 'Malay' under s 2 of the Enactment. Within the context of s 6 read together with the rest of the Enactment, particularly ss 2, 4 and 5, the majority of the Court of Appeal had clearly erred in law in interpreting the word 'persons' in s 6(i)(b) in isolation for the purpose of bringing in the aid of the interpretation legislation to defeat the unambiguous and restrictive meaning of the word. In the context of the Enactment under review, to include legal or juristic persons in the word 'persons' instead of confining it only to living persons and living non-Malay subjects of the Ruler, would be repugnant and inconsistent with the provisions of the specific and special Sultanate lands Enactment, particularly s 2 and the concept of 'subjects' of the Ruler of Pahang. A juristic or legal persons like the respondent company is therefore not entitled to a grant of leases of Sultanate lands under the Enactment. Under section 4, the lease in dispute is therefore null and void ab initio and of no effect. As the two words 'Malay' and 'subject' must plainly and clearly relate to living persons, the court must fearlessly say so without regard to its consequences to the housing development company. In the context of the Enactment as a whole, the word 'persons' can only mean living persons. The duty of the courts in this case is merely to interpret the words 'persons' in the circumstances in which it was used in relation to the qualifying words 'not being Malay subjects of the said Ruler', and to determine the intention of the legislature in the context of the whole Enactment, and not what the legislature might think the words meant when they used them, at the time they were enacted.

On the subject of judicial review or judicial control of administrative action, the following statement of Lord Diplock in the House of Lords is worth quoting on the classification and development of this area of the law:

> My Lords, I see no reason why simply because a decision-making power is derived from a common law and not a statutory source, it should *for that reason only* be immune from judicial review. Judicial review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'. That is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of 'proportionality' which is recognised in the administrative law of several of our fellow members of the European Economic Community; but to dispose of the instant case, the three already well-established heads that I have mentioned will suffice.

(See *Council of Civil Service Unions & Ors v Minister for the Civil Service* [1985] 1 AC 374 at p 410C–E.)

In order to interfere by judicial review, the courts below must look for any illegality or irrationality or procedural impropriety in the decision-making process of the tribunal in arriving at its interpretation of s 6(i)(b)

of the Enactment, and not at the decision itself. If there was such defect in the decision-making process, then the court is of course obliged to set aside the whole decision, including any award of the tribunal. In the present appeal, there was no illegality or irrationality in the reasoning of the tribunal, ie in its decision-making process, to warrant any interference by the court on its interpretation of s 6(i)(b) on the word, 'persons'. In my view, the majority decision of the Court of Appeal in upholding the order of the High Court was against the weight of authorities and therefore wrong in law, and as such it ought to be set aside.

For the sake of completeness, Mr Sethu has raised two other matters in this appeal relating to jurisdiction of the courts. Firstly, he says that the High Court had no jurisdiction at all to hear the company's application for judicial review in view of art 181(2) of the Federal Constitution as unamended. He cited the case of *Karpal Singh v Sultan of Selangor* [1988] 1 MLJ 64 where, inter alia, it was held that an action against the Ruler founded on certain personal statements made by His Highness to the effect that he would not pardon anyone sentenced to death for drug trafficking, was in fact and substance brought against the Sultan in his personal capacity. Mr Sethu also cited a passage in my judgment in the Special Court in the case of *Faridah Begum bte Abdullah v Sultan Haji Ahmad Shah Al Mustain Billah* [1996] 1 MLJ 617 at p 629 where I observed:

> It would therefore appear from the exclusivity provision of cl (3) that the new art 182 not only has taken away the legal immunity enjoyed by HRH from being sued, but also abolished his rights to sue in the ordinary courts. HRH's capacity to sue, or to be sued, cannot now be recognized by the ordinary courts. As far as the ordinary courts under Pt IX of the Constitution are concerned, they continue as before to have no jurisdiction to hear any civil case against HRH, and in addition they also cease to have jurisdiction to hear all civil cases by HRH. The jurisdiction over these matters, even if the immunity is waived, has now been conferred exclusively on this Special Court.

It must be observed that the above passage was made in the context of the amended and not the original art 181(2). Further, learned counsel had sought to rely on the above passage as if the Kesultanan Pahang was being sued both before the tribunal and the High Court. Indeed, the Kesultanan Pahang was the successful plaintiff before the tribunal and was made the respondent in a judicial review before the High Court. It must be observed that the claim in the proceeding before the tribunal was not filed by the Sultan in his personal capacity. As regards the High Court proceeding, even if it could be said to have been brought against the Sultan in his personal capacity, His Highness had by his conduct waived the legal immunity from being sued which the Ruler was enjoying under the unamended art 181(2) of the Federal Constitution. Article 181(2) provides:

> No proceedings whatsoever shall be brought in any court against the Ruler of a State in his personal capacity.

In fact, the Ruler had waived his immunity not only in the High Court but also in the Court of Appeal and before us in the Federal Court by filing the

respective notices of appeal and submitting himself to the jurisdiction of the courts.

Secondly, Mr Sethu submitted that the jurisdiction of the High Court in judicial review has been ousted by s 7 of the Sultanate Lands Enactment, which provides:

> (i) No Court shall have jurisdiction to hear or adjudicate upon any claim to the Sultanate lands or any portion thereof or interest therein, but every such claim may be heard and determined by the Menteri Besar with the aid of two members of the Legislative Assembly appointed by the Ruler of the State in Council to sit with the Menteri Besar as assessors and assist in the determination of such claim. The Menteri Besar shall not in determining such claim be bound to conform to the opinions of the assessors. Every determination of a claim by the Menteri Besar under this section shall be final to all intents and purposes and there shall be no appeal therefrom.
>
> (ii) On the determination of a claim provided in subsection (i) of this section, the Menteri Besar may make an order to give effect to such determination and such order may be executed as if it were a decree made under the Civil Procedure Code by the Court in whose territorial jurisdiction the Sultanate lands which are the subject of the order as situated.

It must be noted that the ouster clause in s 7 clearly deals with appeals only. Further, the only 'claim' to the Sultanate lands was made by the Kesultanan Pahang before the tribunal. There was no claim as such in the High Court. The matter came before the High Court by way of judicial review under the inherent jurisdiction of the superior courts to rectify any error of law on the face of the records. It is not by way of appeal which is prohibited by s 7(i). As stated much earlier on, the Court of Appeal was unanimous on this particular issue that s 7(i) cannot oust the inherent jurisdiction of the court, and we entirely agree with their Lordships' conclusion on the issue of jurisdiction. With very few exceptions on ground of public policy, there is no such thing as exclusivity of jurisdiction enjoyed by any inferior tribunals as far as judicial review is concerned. It has never been doubted that the decision of inferior tribunals is always subject to the inherent jurisdiction of the High Court to do justice by way of judicial review, if the Rule of Law is to prevail. No authority to the contrary has been cited before this court.

Coming back to the principal issue, there are many principles governing the interpretation of statutes. On the facts of the present appeal, I consider Lord Wensleydale's golden rule of construction to be the most relevant and instructive. I could do no better than to reproduce the judgment of Stephenson LJ in *Manson v Duke of Westminster & Ors* [1981] 2 All ER 40 at p 48 where his Lordship said:

> I return therefore to Lord Wensleydale's golden rule cited by Lord Blackburn in *River Wear Comrs v Adamson* (1877) 2 App Cas 743 at pp 764–765, (1874–80) All ER Rep 1 at p 12:
>
> > '... that we are to take the whole statute together, and construe it all together, giving the words their ordinary signification, unless when so

applied they produce an inconsistency, or an absurdity or inconvenience so great as to convince the court that the intention could not have been to use them in their ordinary signification, and to justify the court in putting on them some other signification, which, though less proper, is one which the court thinks the words will bear.'

The court's interpretation in *Law Society v United Service Bureau Ltd* [1934] 1 KB 343 of the word 'person' in the English Solicitors Act 1932 to be limited to natural persons and not to be extended to solicitors firm can therefore be justified on the basis of the golden rule. So is *Re Dodwell & Co Ltd's Trust Deed* [1978] 8 All ER 738 at p 739 where the court held that the word 'persons' must necessarily exclude judicial or artificial persons, as a contrary intention appears in the Law of Property Act 1925, to restrict the word to natural persons. In fact, Abdul Malek Ahmad JCA adopted the same principle when his Lordship considered the Sultanate Lands Enactment as a whole and discovered that there was repugnancy and inconsistency in the meaning of the word 'persons' between the Enactment and the interpretation legislation.

To summarize, although under s 2 of the General Clauses Enactment 1897 of Pahang and the Interpretation Acts of 1948 and 1967, the word 'persons' is defined to include companies incorporated under the Companies Act 1965, on the plain meaning of s 6(i)(b) of the Sultanate Enactment, I am of the opinion that by its phraseology and expression particularly in the context of the phrase 'persons not being Malay subjects of the said Ruler', the word 'persons' must necessarily be confined to natural persons who are non-Malay subjects of the Ruler of Pahang. The clear intention of the State Legislature to exclude incorporated companies like the respondent from the operation of s 6(i)(b) is amply demonstrated by the repeated use of the words 'subjects' and 'Ruler' throughout the Enactment apart from providing the important legislative classification between the Ruler's Malay subjects on the one hand and His non-Malay subjects on the other. To interpret the word 'persons' in isolation without regard to the context and circumstances in which the word is used, and to turn a blind eye on the obvious repugnancy and inconsistency existing by the application of the general definition to the specific and special Enactment under consideration would be wholly unjustified and wrong in law. The inclusion of artificial persons in s 6(i)(b) would not only be inconsistent with the definition of the word 'Malay' in s 2 of the Enactment but also repugnant to the term 'subjects of the Ruler' as understood and legally recognized in this country. Not giving the word 'persons' its ordinary signification and widening the meaning of the word used by the legislature in the subsection, would also be inconsistent with the whole tenor of the Enactment which expressly imposed restriction on the power of the Ruler to grant leases of Sultanate lands or even allow temporary occupation of such lands to individual persons who are not His Highness subjects as provided in particular by ss 4, 5, 6 and 7. The preservation of the special relationship between the Ruler and the subjects of the Ruler is the moving spirit and one of the main objectives of the Enactment as reflected by the repeated use of the words 'Ruler' and 'subjects' throughout the legislation, notwithstanding the fact

that the Sultanate is now but one of the component states in the Federation of Malaysia.

In this particular case, the Court of Appeal ought to have ruled that the High Court could only interfere by judicial review if the nature and manner of interpreting s 6(i)(a) by the tribunal was either illegal or irrational. As the tribunal did not commit any such error in arriving at its judgment dated 17 December 1991, the courts below had no power to substitute the tribunal's interpretation of the section with their own. Consequently, the orders of the High Court and Court of Appeal interfering with the said judgment must be set aside, and the orders of the tribunal which were upheld by Abdul Malek Ahmad JCA be restored. I would accordingly allow this appeal with costs both here and in the courts below. The deposit paid for this appeal should also be refunded to the appellant.

Peh Swee Chin FCJ: This case raises the question of interpretation of some State enactment of Pahang, viz Sultanate Lands Enactment 1919 of Pahang (FMS Cap 221), which, (because of its brevity and because of the necessity of having it read as a whole apparently in order to gather the meaning of certain words to be mentioned later), is set out below in full and is hereafter referred to as 'the said Enactment'.

Chapter 221

Sultanate Lands

An Enactment to rest certain lands in the Ruler of the State of Pahang and to regulate the occupation and leasing thereof.

[6 June 1919]

Short title

1 This Enactment may be cited as the Sultanate Lands Enactment.

Construction

2 For the purposes of this Enactment —

(a) 'Malay' means a person belonging to any Malayan race who habitually speaks the Malay language or any Malayan language and professes the Moslem religion;

(b) Every Malay born within the State shall be deemed to be a subject of the Ruler of the State.

Vesting of lands

3 Subject to the provisions of this Enactment the lands described in the Schedule hereto, which are hereinafter called 'the Sultanate lands,' together with all income and profits whatsoever arising therefrom are and shall be vested in and remain the property of the Ruler for the time being of the State of Pahang.

Dealings restricted

4 No portion of the Sultanate lands shall, except by an instrument under the hand of the Ruler of the State counter-singed, in token of his assent by the Menteri Besar be sold, transferred, mortgaged, charged, or otherwise encumbered, and no portion thereof shall, except as provided

in this Enactment, be leased or otherwise disposed of. Every attempt to sell, transfer, mortgage, charge, encumber, lease, or dispose of the Sultanate lands or any portion thereof in contravention of the provisions of this section shall be null and void and of no effect.

Provided that nothing in this section shall be deemed to prohibit the temporary occupation of portions of the Sultanate lands by Malay subjects of the Ruler of the State with the consent of the said Ruler.

Occupation by other than Malay subjects

5 (i) No person not being a Malay subject of the Ruler of the State shall occupy any portion of the Sultanate lands unless he hold a lease or other written authority in that behalf signed by the Ruler of the State and by the Menteri Besar.

(ii) Any person who occupies any portion of the Sultanate lands otherwise than in accordance with the provisions of subsection (i) of this section shall be guilty of an offence and shall on conviction before a magistrate liable to a fine of one hundred dollars and to a further fine of ten dollars for every day or part of a day during which the offence continues after such conviction.

6 (i) The Sultanate lands or portions thereof may from time to time be leased —

(a) by writing under the hand of the Ruler of the State to Malay subjects of the said Ruler, or

(b) by writing under the hand of the Ruler of the State and of the Menteri Besar to persons not being Malay subjects of the said Ruler,

for any term not exceeding 99 years.

(ii) Leases of portions of the Sultanate lands not held under grant or entry in a mukim register shall be subject to the provisions of the Land Code in the same way as if they were leases of land held under grant within the meaning of the said Enactment, and for the purpose of such leases each portion of the Sultanate lands (not held under grant or entry in a mukim register) which is separately mentioned in the Schedule hereto shall be deemed to be held under a grant, and a folium containing a sufficient description of such portion shall be bound up in the Register of Grants referred to in section 57 of the said Code and shall constitute a separate portion thereof, and the Registrar of Titles shall record thereon the particulars of all leases, and of all matters relating to leases, which would be proper to be recorded on the grant if the land leased were held under grant.

(iii) No right or interest in any lease of the Sultanate lands or any portion thereof shall, except in accordance with a written permission in that behalf signed by the Ruler of the State and by the Menteri Besar, be sold or transferred to or charged in favour of, any person not being a Malay subject of the Ruler of the State. Every attempt to sell or transfer or charge in contravention of the provisions of this subsection shall be null and void and of no effect. Any permission granted under this subsection may be subject to such condition and limitation (if any) as the Ruler of the State may, with the advice of the Menteri Besar, impose.

(iv) Notwithstanding anything contained in the Powers of Attorney Enactment, no power of attorney whereof the donee or any donee is a person not being a Malay subject of the Ruler of the State shall in so far as it relates to any right or interest of a Malay subject of the Ruler of the State in any lease of the Sultanate lands or any portion thereof be irrevocable.

7 (i) No Court shall have jurisdiction to hear or adjudicate upon any claim to the Sultanate lands or any portion thereof or interest therein, but every such claim may be heard and determined by the Menteri Besar with the aid of two members of the Legislative Assembly appointed by the Ruler of the State in Council to sit with the Menteri Besar as assessors and assist in the determination of such claim. The Menteri Besar shall not in determining such claim be bound to conform to the opinions of the assessors. Every determination of a claim by the Menteri Besar under this section shall be final, to all intents and purposes and there shall be no appeal therefrom.

(ii) On the determination of a claim provided in subsection (i) of this section, the Menteri Besar may make an order to give effect to such determination and such order may be executed as if it were a decree made under the Civil Procedure Code by the court in whose territorial jurisdiction the Sultanate lands which are the subject of the order as situated.

8 The Menteri Besar may from time to time by notification published in the Gazette declare that any land described in such notification and not included in the Schedule hereto shall form part thereof, and from and after the date of the publication of such notification the land described, therein shall come within the operation of this Enactment as if the same had been originally included in the said Schedule.

The previous Ruler of Pahang, the late Sultan Abu Bakar of Pahang leased one of the Sultanate lands, ie Lot 4821, Mukim Kuala Kuantan (hereafter called 'the said lot') to the respondent (hereafter referred to as 'the said company', apparently a limited liability company for 50 years with effect from 1 July 1964 and soon after that, the said lease was replaced by even a longer lease for a term of 99 years also with effect from 1 July 1964. The said leases just mentioned, it has never been disputed, were executed under the hand of the said late DYMM Sultan Abu Bakar and 'countersigned in token of his assent by the Menteri Besar'. The substituted lease is hereafter called 'the said lease'.

The lessee, ie the said company, and the then Ruler and the Menteri Besar must have relied, not once, but twice on s 6(i)(b)of the said Enactment which is set out above.

The said company later sub-leased the said lot or parts of the said lot by subleases to other parties. It is to be noted that in regard to the obligations or vested rights that were created by the previous late Ruler of Pahang, nothing was done in his life time which bore any sign of not respecting such obligations and vested rights and which involved also innocent third parties who were not parties to the said lease.

The name of the appellant, the Sultanate of Pahang in the High Court was later changed to 'Kesultanan Pahang' in the Court of Appeal (hereafter called 'the appellant'). The appellant instituted a claim before a special tribunal created by s 7 of the said Enactment, comprising the Menteri Besar assisted by two assessors appointed by the Ruler of Pahang from among members of the State Council, the claim being, to quote only the part of the claim relevant to us and representing the only live issue before this court, that by virtue of ss 4 and 6 of the said Enactment, the said lease granted to the said company was invalid on the ground that the said company was not a natural person, nor a subject of the Ruler of Pahang. Sections 4 and 6 of the said Enactment have been set out above.

The special tribunal under s 7 ruled that the said lease was null and void ab initio and the sub-leases executed thereunder were void accordingly; and to quote the ruling, it stated as follows:

(i) The lease of the demised land by the then Ruler of the State of Pahang is null and void for the following reasons —

> The word 'subjects' appearing in s 6(i)(b) [as well as sub-s (i)(a)], to my mind, restrict the meaning of the word 'persons' to mean only natural persons who are not Malay subjects of the Ruler and thus, as the lessee, Sathask Realty Sdn Bhd, is a company, it cannot be holding a lease over any Sultanate land as it is not a natural person, and thus the granting of the head lease to Sathask Realty Sdn Bhd is ultra vires.

(ii) as the head lease is void ab initio, the sub-leases created thereunder are accordingly void;

(iii) the creation of the sub-leases also contravenes s 6(iii) of the Enactment as there is no evidence that the written permission of the Menteri Besar had been obtained prior to the creation of the sub-leases.

The said company then applied to High Court, for the issue of an order of certiorari to quash the said ruling or the decision of the special tribunal and it was quashed after a hearing, and on appeal to the Court of Appeal, there was a division of opinion, the majority having upheld the said decision of the High Court (see [1997] 2 MLJ 701), and the appellant being dissatisfied, further appealed before us. Speaking for myself, I will support the majority judgments delivered and since the argument for the appellant before us was based substantially on the minority judgment, I will give my own reasons, with respect, for dissenting from the minority judgment.

The minority in the Court of Appeal came to the conclusion substantially to the effect that the words in s 6(i)(b), viz: '... persons not being Malay subjects of the said Ruler', in the context of the said Enactment particularly with regard to the repeated use of the words 'Malay subjects', therein, must only mean natural persons and not, eg an incorporated company like the said company.

The said company substantially depended on the Interpretation Acts 1948 and 1967 (wherein is found the definition of the word 'person' as including any body of persons, corporate or unincorporate) and s 2 of the General Clauses Enactment 1897 of Pahang, the forerunner for Pahang of the Interpretation Acts 1948 and 1967.

By the dissenting judgment, it was held to the effect that the word 'persons' must mean human beings and this could be gathered from the repeated use of the words 'Malay subjects' or 'subjects of the Ruler' in the said Enactment, viz in ss 2(b), 4, 5, 6(i)(a) and (b), (iii) and (iv), 8 (all of which, of course, have been set out above) and that s 2 of the General Clauses Enactment 1897 provided to the effect for the statutory definitions therein to be subject to 'something repugnant in the subject or context'.

As between the Interpretation Acts 1948 and 1967, and General Clauses Enactment 1897 of Pahang, the latter for the purpose of this appeal, must necessarily apply to this case and to Pahang on the date of coming into force of the said Enactment in 1919. The above-mentioned enactment of interpretation of 1897 will be referred to as 'the Interpretation Enactment' hereafter. Section 2 of the Interpretation Enactment is set out below for ease of reference.

> In this Enactment and in every written law whether made before or after the commencement of this Enactment, unless there be something repugnant in the subject or context —
>
> (xviii) 'Person' shall include any company or association or body of individuals whether incorporated or not.

The dissenting judgment in the Court of Appeal further, to the effect, enquired if s 6(i)(b) quoted above did not mean human beings, whether there could be such things as Malay corporate bodies or non-Malay corporate bodies and if so what would be the test for drawing the line between them.

While the above reasoning sounds plausible, I found myself dissenting wholly from it with great respect.

Whilst it is true that among the various rules of interpretation of statutes, it is an important rule that a statute should be construed as a whole for certain purpose and in fact the dissenting judgment seems to have been based on this but for finding and emphasizing the repeated use of the words of 'Malay subjects', etc. There are various other rules, such as the literal rule, the golden rule, the mischief rule (ie the purposive approach rule), ejusdem generis rule, expressio unius est exclusio alterius rule, etc. The dissenting judgment does not refer to any other rules or their actual application by omitting to mention the names of such rules.

However apart from the aforesaid rules, in aid of interpretation of statutes, there are also a large number of general presumptions which may apply unless precluded expressly or by necessary implication and which appear to have been totally ignored in the dissenting judgment too. Such general presumptions are, eg presumptions against (a) interference with vested rights; (b) a legislature not having a parliamentary or legislative intention for justice and common sense; (c) a legislature not knowing the existing state of the law and the decided cases on words interpreted by courts at the time of bringing in new legislation; (d) inconsistency in not interpreting similar language in statutes in pari materia, etc. There are the rules, and there are also the presumptions, all together involved in the interpretation of statutes, and for that matter in the interpretation of documents other than statutes.

It is in my view that not just a single rule of interpretation should be contemplated, pursued and employed in interpreting any statute to the exclusion of all others; one should test the said single rule with other rules and general presumptions wherever appropriate.

It is my further view that by far the most important rule for interpreting a statute, or any section or words therein, is the purposive approach rule, which will in practice resolve most if not all of the difficulties one faces. The purposive approach rule which is for finding the intention of the legislature means, for the purpose of the instant case, in a nutshell, answers to the questions, first and foremost, as to what is the subject matter of the said Enactment; as to what is the object of the said Enactment; as to what is the part that is to be played by s 6(i)(b)of the said Enactment and would the definition of 'person' in the Interpretation Enactment, if adopted, be found repugnant to or inconsistent with the object of the said Enactment. This purposive approach rule originated from the well known *Heydon*'s case (1584) 3 Co Rep 7a; 76 ER 637 and is another name for the well-known mischief rule about the mischief which is sought to be avoided or prevented by a statute.

Thus, Lord Diplock in *Kammins Ballrooms Co Ltd v Zenith Investment (Tarquay) Ltd* [1970] 2 All ER 871 explained and used the purposive approach rule in finding that there could be a waiver of compliance of some rule in a statute on account of, eg equitable estoppel; though by employing the literal rule, there could be no such waiver allowable, and his Lordship seems to have employed the literal rule first and then tested it with the purposive approach rule in ultimately holding later that there could be such a waiver dependent on evidence.

Again in *St John Shipping Co v Joseph Rank Ltd* [1957] 1 QB 267, on the question of construction of a statute, Devlin J said: '... [t]he statute is to be construed in the ordinary way; one must have regard to all relevant considerations and no single consideration, however important, is conclusive'. Thus, the gist of that case is that a contract is not to be held to have been impliedly prohibited by statute unless there is clear implication or necessary inference, and that among other things, one must have regard to the consequences, which his Lordship discussed.

The consequences above-mentioned are in my view, referable also to the general presumptions which I described as such earlier for such general presumptions refer to consequences.

Again in *Yango Pastoral Co Pty v First Chicago Australia Ltd* (1978)139 CLR 410 (High Court of Australia), Gibbs ACJ, in discussing the test of protection of public which may be gathered from a statute in deciding whether a contract is rendered null and void by a statute which does not expressly prohibit a contract but where there is at the same time a penalty provided by the statute for making or performing such a contract, his Lordship held that the test of protection of the public is not the only test. He said: 'It could be contrary to reason and principle to allow one circumstance to override all other considerations in the interpreting of a statute'. The considerations mentioned are referable also to other rules of interpretation or any of the general presumptions.

A The dissenting judgment does not seem to deal with this primary rule of finding out the legislative intent, but held quite correctly that in interpreting any statute, 'one has to read the Enactment as a whole and not any particular section by itself'. He did so, not to find the intention of the legislature, but seemingly for finding the meaning for the words 'persons not being Malay subjects' from the words 'the subjects of the Ruler' and B 'Malay subjects' in other sections of the said Enactment.

I would like to emphasize that the primary purpose for going through the whole statute while interpreting it should be to discover the legislature's intention by means of the purposive approach rule. Thus, Lord Evershed in the House of Lords *Re Newspaper Proprietors' Agreement* [1964] 1 WLR 31 C at p 39 said: '... [t]here is, indeed, solid and respectable authority for the rule that you should begin at the beginning, and go on till you come to the end, then stop... when construing an Act of Parliament and seeking to discover from the Act the parliamentary intention'. In that case, incidentally, the House of Lords found that s 20 of England's Trade Practices Act 1959 D applied also to agreements that had already been terminated by both parties, and not only to existing agreements.

To revert, to the non-finding of the legislature's intention; from the dissenting judgment, the meaning for the words 'persons not being Malay subjects' seems to have been gathered from other words mentioned above. The learned dissenting judge appears to have in mind the rule of E interpretation known as 'Noscitur a sociis', ie 'known from its associates', in other words, the correct meaning of a particular word with a doubtful meaning may be gathered from associated words or words that surround it.

The above rule in my view, cannot begin yet to come into play when the words said to require the ascertainment of their meaning or correct F meaning do not require such ascertainment. The starting premise is, to quote from *A Selection of Legal Maxims* by Herbert Broom (10th Ed) by RH Kersley at p 39 under the heading of 'Noscitur a sociis' where it states:

> ... when the meaning of a particular word is doubtful or obscure or when a particular expression when taken singly is inoperative, the intention of the G party who used it may frequently be ascertained by looking at the adjoining words or at expressions occurring in other parts of the same instrument ... .

That, in my view, is an excellent explanation of the 'Noscitur rule'.

The word 'persons' in the phrase of 'persons not being Malay subjects' in s 6(i)(b) of the said Enactment is not a word with doubtful meaning, H neither is it a word which if taken singly is inoperative or cannot mean anything by itself. The word 'person' was defined by a statute, ie by the Interpretation Enactment which was already in existence when the said Enactment itself was enacted. One of the general presumptions is that the legislature is supposed to know the existing law when it enacts another law. I Further, even though the said Interpretation Enactment and the said Enactment are not statutes in pari materia, the word 'persons' in the said Enactment and the word 'persons' in the Interpretation Enactment are not only in pari materia but are also identical. The statutory definition of the word should be accepted subject only to the question as to whether the

adoption of the statutory definition is repugnant to the statute, ie the said Enactment; such repugnancy will be further dealth with later. A

If a word in a statute has been statutorily defined albeit subject to a proviso, it would require indeed an enormous amount of persuasion to ask a court to reject the statutory definition in order to hold that the word has a doubtful meaning. It only remains to be seen whether the statutory definition of the word 'persons' is repugnant to the said Enactment, with its subject, or with its context, ie with other words in any part of the said Enactment. The word 'repugnant' shall mean 'inconsistent with' rather than 'extremely distasteful'. The said Enactment has to be looked through to ascertain the legislature's intention by adopting the purposive approach rule. B C

By employing this rule, one finds that the said Enactment is concerned with the manner in which the Ruler in Pahang firstly, is to sell, transfer, mortgage, charge or otherwise encumber any of the Sultanate lands, and secondly with the manner in which the Ruler is to lease a, or any portion of the Sultanate land, see s 4 set out above. The said manner is that in connection with the sale, transfer, mortgage, charge or otherwise of any Sultanate lands, both the Ruler and the Menteri Besar must consent and sign the usual instrument. In connection with a lease of any Sultanate lands, the Ruler alone signs without the Menteri Besar when the lease is granted to Malay subjects of the Ruler. But when a lease is given to 'persons' not being Malay subjects, again both the Ruler and the Menteri Besar must sign the instrument of such lease. D E

The subject matter of the said Enactment is therefore the said manner of dealings of the Ruler's Sultanate lands.

The object of the said Enactment is self-evident, it is to place restrictions on the Ruler's dealings with the Sultanate lands or in other words, the mischief sought to be avoided by the said Enactment is the hitherto complete freedom of the Ruler to deal with the Sultanate lands, or more precisely lands which prior to the said Enactment, the Ruler was the registered proprietor. The socio-political policy underlying the object of the said Enactment is outside the interpretation role of a judge, and need not be discussed. F G

In view of the above, it is self-evident that the lease to the said company cannot be possibly inconsistent with the subject of the said Enactment, because it is consistent with the said manner the Ruler was to transact dealings of Sultanate lands; neither could it be inconsistent with any words or sections of the said Enactment. In ordinary layman language, so long as the Menteri Besar and the Ruler signed the lease, it would not matter whether the lease was given to human beings who were Malay subjects of the Ruler or a group of non-Malay human beings who incorporated a company like the said company. H

The above conclusion from the use of the purposive approach is in harmony with other general presumptions which I have mentioned earlier about the presumption of concern for justice and common sense on the part of the legislature or that about any interpretation not to interfere with vested rights, etc. I

In passing and by the way, I can not help thinking that in connection with this case, perhaps, the words 'Malay subjects', 'subjects of the Ruler' and of 'non-Malay subjects' and the frequent use of such words in the said Enactment have a tendency to heighten very much the sense of distinction between two groups of people, one group being people of Malay descent and the other group of being of non-Malay descent so that when a limited liability company created by a certificate of incorporation from the Registrar of Companies is juxtaposed among these groups of people, it would appear exceedingly alien to an observer of these two groups of people,. It is to be remembered however that the words such as 'Malay subjects' have their terminological origins in words such as 'British subjects' used in Britain in the days of Queen Victoria for people living in Britain subject to the allegiance they owed to the Queen. The words such as 'British subjects' have been replaced increasingly by such substituted words of 'Citizens of the United Kingdom', etc after the Second World War so that the expression of British subjects or 'Her Majesty's subjects' could even appear to be somewhat archaic in modern times.

Quite apart from the tremendous legal advantages of a corporation, doing business for economic gain, such as having its perpetual succession and therefore not subject to the shocks that 'flesh is heir to', of having its liability limited so the risk of personal liability of people who register a company for themselves to do business is reduced to a negligible level, etc., a limited liability company is nonetheless an association of people for some object of economic gain notwithstanding the ratio in *Salomon v Salomon & Co Ltd* [1897] AC 22 (HL) and the company law which provide these legal advantages just mentioned. If I am said to have gone behind the legal corporate personality by speaking about an association of persons for the object of economic gains, and if it comes to that, let it be remembered that the veil of incorporation can be lifted not only by the legislature but also by the courts.

Speaking for myself, I therefore uphold the majority judgments and dissent from the minority judgment, all delivered in the court below. In consequence, I would dismiss the appeal with costs and that the deposit in court be paid out to the respondent to account of taxed costs.

Mohamed Dzaiddin FCJ: This is an appeal from the decision of the Court of Appeal given on 2 December 1996 dismissing an appeal against the decision of the High Court Kuantan concerning the interpretation of s 6(i)(b) of the Sultanate Lands Enactment 1919 (Cap 221) of Pahang ('the Enactment') which affects a lease of a piece of Sultanate land held under CT No 5941, Lot No 4821, Mukim of Kuala Kuantan, Kuantan, Pahang ('the demised land') granted by HRH the Sultan of Pahang to the respondent.

It is not necessary that I should state the background facts of the case since they sufficiently appear in the grounds of judgment of my learned brother, Mohd Azmi FCJ. However, as the issue here concerned the interpretation of s 6(i)(b) of the Enactment, for clarity I reproduce the section hereunder:

(i) The Sultanate lands or portions thereof may from time to time be leased —

(a) by writing under the hand of the Ruler of the State *to Malay subjects* of the said Ruler, or

(b) by writing under the hand of the Ruler of the State and of the Menteri Besar *to persons not being Malay subjects* of the said Ruler,

for any term not exceeding 99 years. (Emphasis added.)

(ii) ... ;

(iii) No right or interest in any lease of the Sultanate lands or any portion thereof shall, except in accordance with a written permission in that behalf signed by the Ruler of the State and by the Menteri Besar, be sold or transferred to, or charged in favour of, any person not being a Malay subject of the Ruler of the State. Every attempt to sell or transfer or charge in contravention of the provisions of this subsection shall be null and void and of no effect. Any permission granted under this subsection may be subject to such condition and limitation (if any) as the Ruler of the State may, with the advice of the Menteri Besar, impose.

(iv) ... .

Decision of the trial judge

At the High Court, Kuantan, Arifin Zakaria J reversed the finding of the tribunal, constituted under s 7 of the Enactment, in an application for an order of certiorari filed by the respondent. His Lordship found the tribunal had committed an error of law apparent on the face of the record when it ruled that the word 'subjects' in s 6(i)(b) of the Enactment restricted the meaning of the word 'persons' to mean natural persons only. After hearing counsel and considering the Enactment, the Pahang General Clauses Enactment 1897 and the Interpretation Acts 1948 and 1967, the learned trial judge formed an opinion that the word 'persons' under s 6(i)(b) should be given a broader meaning to include a body corporate. He held that 'persons' in the expression 'persons not being Malay subjects of the said Ruler' included the respondent. His Lordship reasoned (at pp 24–25 appeal record vol II):

> For it is fallacious to say that the word 'subject' appearing in ss 4, 5 and 6 has the effect of narrowing the meaning of the expression 'persons' as found in s 6(i)(b) of the Enactment. This becomes apparent if one were to ask the question: 'Is a body of persons, corporate or unincorporate, a person not being a Malay subject of the Ruler of Pahang?' I am sure the answer to that is in the affirmative. That being so, how could one then say that the expression 'persons' in the said s 6(i)(b) of the Enactment does not include a body corporate.

Court of Appeal stage

The Court of Appeal, by a majority decision, upheld the trial judge's interpretation of s 6(i)(b) of the Enactment and dismissed the appeal (see [1997] 2 MLJ 701).

A In upholding the trial judge's conclusion that 'persons' not being Malay subjects of the said Ruler in s 6(i)(b) included the respondent, Mahadev Shankar JCA, delivering the majority judgment, took into consideration s 2 of the Pahang General Clauses Enactment No 1 of 1897 which defined 'person' to include any company or association or body of individuals whether incorporate or not. He reasoned that as Pahang already B had a Companies Enactment in 1897 (Enactment No 19 of 1897), by the time the Enactment came into force on 6 June 1919 the concept of corporate personality was well entrenched into the laws of Pahang. His Lordship was also of the view that ss 5 and 6 of the Enactment must be construed together. According to him, the Enactment recognized that the C Ruler had power to lease Sultanate lands both to his Malay subjects and to others. Therefore, adopting the purposive approach to the interpretation of the Enactment, his Lordship concluded that the avowed purpose of the Enactment was to empower the Ruler to permit occupation and development of Sultanate land by Malay subjects and 'other than Malay subjects'.

D

Mokhtar Sidin JCA approached the issue by first considering the effect of s 2 of the Interpretation and General Clauses Ordinance 1948 ('the 1948 Ordinance') on the Enactment. It was contended on behalf of the appellant that the 1948 Ordinance had no application because the Enactment was enacted earlier than the Ordinance. His Lordship rejected E this argument on the basis of the existence of the Pahang General Clauses Enactment 1897, the predecessor to the 1948 Ordinance. Section 2 of the 1948 Ordinance defined the word 'person' to include any company or association or body of individuals whether incorporated or not. He added that although the definition of the word 'person' in the General Clauses F Enactment 1897 is not the same as the definition in the 1948 Ordinance, it intended to mean more or less the same. Thus, in his view, when the Enactment was enacted, the legislator must be aware of the General Clauses Enactment 1897 and would definitely have known what was meant by the word 'person'.

G His Lordship also formed the view that the natural meaning of s 6(i) of the Enactment envisaged that the Ruler could lease the Sultanate lands to two categories of people. Under s 6(i)(a), the Ruler, by his writing, without the consent of the Menteri Besar could lease any of the Sultanate lands to his Malay subjects and under s 6(i)(b) the Ruler, by writing under his hand could lease his land to any other persons (including a corporation) H not being a Malay subject of his, but must be with the consent of the Menteri Besar. He added that to read it otherwise would not give the required effect of s 6.

Abdul Malek Ahmad JCA, in his dissenting judgment, disagreed with the reasonings and conclusion of the learned High Court judge on s 6(i)(b) of the Enactment. He was of the view that the learned judge had confined I himself to s 6(i)(b) and totally ignored s 6(i)(a). It was made worse by giving different interpretations to the same word 'subjects' in separate paragraphs of the same s 6(i). In his view, to construe the word 'subjects' in s 6(i)(a) to mean a natural person, but the words 'persons not being

Malay subjects' in s 6(i)(b) to mean a natural person as well a body corporate, amounts to confining oneself to interpreting s 6 alone and ignoring the basic principles of statutory interpretation that a statute must be read as a whole and not any particular section by itself. To reinforce his argument, his Lordship referred to ss 5 and 2 of the Enactment. According to him, s 5 begins with the expression: 'No person not being a Malay subject ...' and reading the Enactment as a whole and in its proper context, the words 'Malay subject' must mean a natural person and the words 'no person' must also refer to a Malay subject in view of s 2 which defines the word 'Malay' as a person belonging not to the Malay race but 'to any Malayan race' who habitually speaks the Malay language or any Malayan language and professes the Muslim religion. His Lordship also relied on s 2(b) which speaks of a Malay 'born' within the State of Pahang. In the premises, his Lordship concluded as follows (see [1997] 2 MLJ 701 at p 716C–F):

> The Malay subject of the Ruler must therefore be a natural person. Going then to ss 5 and 6(i)(b) of the Enactment where the respective categories of 'no person not being a Malay subject' and 'persons not being Malay subjects' appear, can we certainly and convincingly conclude that it must refer to bodies corporate as well? I find that this is not the correct approach to construe a statute. I was more inclined, therefore, to hold that in view of the provisions in the Enactment read as a whole, a 'person' and 'subject' there must mean a natural person.
>
> All the definition sections in the interpretation laws, irrespective when they were enacted, start off with a proviso clause and the definition certainly cannot apply when the statute being interpreted read in its proper context indicate otherwise as in this case. Hence, even s 2 of the General Clauses Enactment 1897 begins with 'In this Enactment and in every written law whether made before or after the commencement of this Enactment, unless there be something repugnant in the subject or context'.
>
> To say that 'person' in the Enactment includes a body corporate would certainly be repugnant or contrary to what the statute intended and I would, therefore, with respect hold that the word 'person' and 'subject' in the Enactment can and must only mean a natural person.

The appeal

It is against the above majority decision of the Court of Appeal (see [1997] 2 MLJ 701) that leave was granted by this court on 29 July 1997 for the appellant to appeal. To recap, the Court of Appeal expressed different opinions on the meaning of the expression 'persons not being Malay subjects' of the Ruler in s 6(i)(b) of the Enactment. The majority decision, by placing reliance on the word 'persons' and in the context of the Pahang General Clauses Enactment No 1 of 1897 and the Interpretation Acts 1948 and 1967 which define 'person' to include 'any body of persons, corporate or unincorporate', concluded that the expression included a corporation or private limited company. The dissenting decision, on the other hand, held, upon reading the Enactment as a whole, the word 'persons' could only refer to natural persons and not a body corporate.

Submissions of counsel

Before us, En Sethu, for the appellant, submitted that the majority decision of the Court of Appeal had misconstrued the meaning of the expression 'persons not being Malay subjects' in s 6(i)(b) by placing great emphasis on the word 'persons' only, and disregarded the remaining words 'not being Malay subjects'. As I understand him, the emphasis should be on the word 'subjects' because s 6(i)(a) requires written consent of the Ruler to Malay subjects of the Ruler and s 6(i)(b) requires written consent of both the Ruler and the Menteri Besar to persons who are not being Malay subjects of the Ruler. In the context of the legislation as a whole, he submitted that the word 'subjects' must refer to natural persons and does not include a corporation. Encik Sethu advanced the following reasons. First, he referred us to the opening words of s 5, which states: 'No person not being a Malay subject ...'. He then asked the question whether the word 'subject' in the section was limited to a natural person or extended to a corporation. His answer was that it was limited to a natural person only because a corporation cannot be a 'person not being a Malay subject'. Next, he referred to s 2 on the definition of the word 'Malay' and adopted the reasoning of Abdul Malek Ahmad JCA. His third reason is interesting, and in a way quite persuasive. He argued that the word 'subject' can only refer to a natural person because of an element of 'allegiance' to the Ruler attached to it. He relied on *Americh v R* [1942] NZLR 380 (CA) which established (per Callen and Kennedy JJ) that anyone who for the time being owed allegiance to the Sovereign and enjoyed his protection, was fairly described as a 'subject' so long as a duty of allegiance and the right to protection existed. He also referred to *State Trading Corp of India v The Commercial Tax Officer & Ors* AIR 1963 SC 1811, an authority which dealt with the issue of citizenship in the context of art 19(1) of the Indian Constitution.

In reply, En Chin Yew Meng submitted that the restrictive interpretation of the statute could not apply when interpreting the words 'persons not being Malay subjects' in s (i)(b). If it was intended that only non-Malay subjects could be granted a lease of the Sultanate lands under s 6(i)(b), then why not the words 'non-Malay subjects' used and omit the preceding word 'persons'. Counsel further submitted that the use of the words 'Malay subjects' appearing in s 6(i)(a) and (b) of the Enactment should not be read to mean that only natural persons are entitled to be granted a lease of Sultanate lands because of s 4. The absence of any restriction to any category of parties which could acquire an interest in Sultanate lands as provided in s 4 would underlie the general policy of the Enactment thereby indicating that there was nothing repugnant in the provisions of the Enactment to bring about the exclusion of the application of the Interpretation Acts or its earlier corresponding enactment to be put to bear upon the interpretation of the word 'person' to exclude a body corporate. In the circumstances, the court should adopt a liberal interpretation to s 6(i)(b) and construe the word 'persons' to include a corporation. In reply to En Sethu's argument on the meaning of the word

'subject', counsel stated that the element of allegiance was not an issue in this appeal, nor was it a predominant factor in determining the meaning of the words 'persons not being Malay subjects' under s 6(i)(b) of the Enactment.

Conclusions

This appeal raises directly the question whether the word '*persons*' in the expression '*persons* not being Malay subjects of the said Ruler' in s 6(i)(b) of the Enactment refers to natural persons or includes a corporation. That being the critical issue, my approach in this appeal will be to examine in the context of s 2(xviii) of the Pahang General Clauses Enactment 1897, if there be something repugnant in the subject matter or in the context of the Enactment that the word 'persons' in s 6(i)(b) excludes a corporation. I approach the issue on the basis of my primary finding that the majority decision of the Court of Appeal had committed a fundamental error when they applied the meaning of the word 'person' in s 2 of the Pahang General Clauses Enactment 1897 to the word 'persons' in the expression 'persons not being Malay subjects' in s 6(i)(b) of the Enactment, thereby arriving at the conclusion as they did that the word 'persons' included a corporation, without considering whether there is something repugnant, or contrary intention shown, in the subject matter or context in the Enactment. It must be remembered that a definition in the defining enactment applies only where the contrary intention does not appear (Bennion, *Statutory Interpretation* (2nd Ed, 1992) p 417). Or to put it in another way, whether it is stated or not, a provision of an Interpretation Act does not apply if the contrary intention appears from the Act in which the term in question is used (ibid at p 421).

Section 2 of the Pahang General Clauses Enactment 1897 provides:

> In this Enactment and in every written law whether made before or after the commencement of this Enactment, *unless there be something repugnant in the subject or context* —
>
> (xviii) 'Person' shall include any company or association or body of individuals whether incorporated or not.' (Emphasis added.)

'Repugnant' simply means 'contrary or contradictory (to), inconsistent or incompatible (with)' — *Shorter Oxford English Dictionary*. It follows that the expression 'unless there be something *repugnant* in the subject or context' means 'unless there is something contrary or contradictory to the subject or context' of the Enactment. I shall go further to equate the expression to mean 'unless the contrary intention appears'.

In *Law Society v United Service Bureau Ltd* [1934] 1 KB 343, the English High Court considered the meaning of the expression 'unless the contrary intention appears' under s 2 of the English Interpretation Act 1889. There, the respondent company was charged under s 46 of the Solicitors Act 1932 ('the Act') with having wilfully pretended to be qualified, or recognized by law as qualified, to act as solicitors. Section 46 provides that '*any person*, not having in force a practising certificate, who wilfully

pretends to be ... qualified ... to act as a solicitor' shall be liable to a penalty. The respondent also did not have in force a practising certificate under s 43(1) of the Act. The magistrate held that the words 'any person' in s 46 did not include a limited company such as the respondent, and he therefore dismissed the information.

On appeal, the King's Bench Division upheld the magistrate's decision. However, the critical issue before their Lordships of the King's Bench Division was the applicability of ss 2 and 19 of the Interpretation Act 1889 to s 46 of the Act. Section 2(1) provides:

> In the construction of every enactment relating to an offence punishable on indictment or on summary conviction ... the expression 'person' shall, *unless the contrary intention appears*, include a body corporate. (Emphasis added.)

Section 19 provides:

> In this Act and in every Act passed after the commencement of this Act [1 January 1890] the expression 'person' shall, unless the contrary intention appears, include any body of persons, corporate or unincorporate. (Emphasis added.)

In his judgment, Avory J stated that whether the expression 'any person' in s 46 of the Act included a corporation or a limited company involved a further inquiry under s 2 of the Interpretation Act 1889, ie whether there was in the Act anything which would indicate a contrary intention.

At pp 347–349, his Lordship opined:

> In my view, the words in s 2 of the Interpretation Act 1889, 'unless the contrary intention appears', merely embody the principle laid down by the House of Lords in *Pharmaceutical Society v London & Provincial Supply Association* 5 App Cas 857. Lord Selborne LC there said (ibid at p 862):
>
> > 'I think the principle laid down by the junior counsel for the respondents was substantially right; that if a statute provides that no person shall do a particular act except on a particular condition, it is, prima facie, natural and reasonable (unless there be something in the context, or in the manifest object of the statute, or in the nature of the subject-matter, to exclude that construction) to understand the legislature as intending such persons, as, by the use of proper means, may be able to fulfil the condition; and not those who, though called 'persons' in law, have no capacity to do so at any time, by any means, or under any circumstances, whatsoever.'
>
> That principle is very succinctly stated by Lord Blackburn in applying it to the Act which was then under discussion. He said (ibid at p 871):
>
> > 'The Act then goes on, in the first section, which is I think really very important, to say that:
> >
> > > "... it shall be unlawful for any person to sell or keep open shop for retailing, dispensing, or compounding poisons, or to assume or use the title of chemist and druggist, or chemist or druggist, or pharmacist, or dispensing chemist or druggist, in any part of Great Britain, unless such person shall be a parmaceutical chemist, or a chemist and druggist ... ."

> Now, my Lords, standing there, it does seem to me, though without laying down any technical rule, that the plain meaning of the words is, and they are used in this sense — such a person as could become a pharmaceutical chemist. A corporation could not; an individual can. It seems to me, therefore, that the Act plainly says in the first section, 'It shall be unlawful to sell or keep open shop or assume the name of a chemist or druggist for any person,' that is to say, any natural person, 'unless he becomes a pharmaceutical chemist.'

Applying the principle there laid down, it seems to me that s 46 of the Solicitors Act 1932, must be held to contemplate a person who can have in force a practising certificate as a solicitor. By s 43 the possession of such a certificate is an essential condition to the qualification of any one to act as a solicitor. A person not so qualified is referred to as an 'unqualified person'. It is clear beyond possibility of argument that a corporate body cannot pass the final examination provided for by the Act and, therefore, cannot apply to be admitted as a solicitor, or be so admitted, within s 3 of the Act. Being incapable of being admitted as a solicitor, a corporate body, it is obvious, cannot be qualified under s 43 and cannot have in force the practising certificate mentioned in s 46. In my opinion, therefore, the respondent company in this case cannot be brought within the words 'any person' in s 46.

Charles J who entirely concurred with Avory J had this to add at pp 350–351:

> ... His [counsel's] argument is that, when one looks at the purpose of the Solicitors Act, 1932, and the terminology of s 46 itself, there is nothing to indicate that any contrary intention appears which would cause the word 'person' to connote a natural person alone and not an artificial person such as a body corporate. We have been referred to a great many cases which have been decided on the definition of the word 'person' in other Acts, and the argument has been rather based on analogy. We have been referred to the Dentists Act, 1878, the Veterinary Surgeons Act, 1881, and in particular to the Pharmacy Act, 1868, which was discussed in *Pharmaceutical Society v London & Provincial Supply Association Ltd* 5 App Cas 857. In all the cases decided under those Acts, it was held that a limited company was not a 'person' within the meaning of the Act under discussion and that 'person' meant natural person. In *Pharmaceutical Society v London & Provincial Supply Association Ltd*, it was held that a 'person' meant a person skilled in matters pharmaceutical, and not an impersonal corporate body which would know nothing about that particular business. Similar decisions were given on the interpretation of the word 'person' in the Dentists Act 1878, and the Veterinary Surgeons Act 1881, on the ground that in those Acts a 'contrary intention' appeared, and that there was something which excluded the impersonal and directed attention to the personal.
>
> Is there anything in s 46 of the Solicitors Act 1932, which should lead the court to a like conclusion? In my opinion, there is. Mark the words in the section, 'not having in force a practising certificate,' the possession of which is one of the things necessary to qualification to act as a solicitor under s 43 of the Act. Refer back to s 3. It is abundantly clear that a corporate body is not and never has been regarded as being capable of possessing a practising certificate or of being admitted as a solicitor. I think, therefore, that s 46 refers, not to a body corporate, but to a person who is capable of being admitted to the ranks of solicitors by the Master of the

A Rolls under s 3 and of acting as a solicitor if he takes out a practising certificate.

Applying the principle laid down by the House of Lords in *Pharmaceutical Society* which was adopted in *Law Society* when the latter case applied s 2 of the English Interpretation Act 1889 to s 46 of the Act under discussion, B it is now incumbent upon me to examine, in view of the definition of the word 'person' in s 2(xviii) of the Pahang General Clauses Enactment 1897, whether there is anything repugnant in the nature of the subject matter or in the manifest object or in the context of the Enactment, which indicates that the word 'persons' in the expression 'persons not being Malay subjects' in s 6(i)(b) of the Enactment excludes corporations. In C considering this issue, it is uppermost in my mind the settled principle of interpretation that an Enactment or Act of Parliament must be read as a whole.

First, it is clear that the legislative purpose or object of the Enactment is to vest certain lands in Pahang in the Ruler of the State and to regulate D the occupation and leasing of the said lands. Section 5 deals with occupation. With respect to leases, s 6(i) empowers the Ruler of Pahang to grant leases of the Sultanate lands to two categories of persons who must be Malay subjects of the Ruler (s 6(i)(a)) and persons not being Malay subjects of the said Ruler (s 6(i)(b)). Thus, in the context of s 6 as to who can be E lessees of the Sultanate lands, it is patently clear that only Malay subjects and persons who are non-Malay subjects of the said Ruler, can hold the lease. However, both persons require written consent of the said Ruler. As for occupation of any portion of the Sultanate land under s 5, persons not being Malay subjects of the Ruler can occupy provided they hold a lease or other written authority signed by the Ruler and the Menteri Besar. Note F the opening words in s 5(i), viz: 'No person not being a Malay subject of the Ruler'. Last but by no means least, the expression 'Malay subjects of the Ruler' is also used in s 4. In the light of the whole framework of the Enactment and the repeated use of the words 'Malay subjects of the Ruler' in the above sections, in my opinion, in construing s 6(i)(b) the emphasis must be on the words 'Malay subjects' and not the word 'persons'. Hence, G if we speak of 'persons not being Malay subjects of the said Ruler' they must be intended to refer to natural persons who are non-Malay subjects of the Ruler.

Perhaps, I can go one step further by considering the meaning of the expression 'Malay subjects of the Ruler'. For the purposes of the Enactment, H s 2(a) defines 'Malay' as a person belonging to any Malayan race who habitually speaks the Malay language or any Malayan language and professes the Muslim religion. Section 2(b) goes on to state that every Malay born within the State of Pahang shall be deemed to be the subject of the Ruler of Pahang. In the context of s 2, can an artificial legal person, as opposed to a natural person, be a 'Malay' and become a subject of the Ruler of I Pahang? The answer must emphatically be 'no' because a corporation cannot speak Malay or any Malayan language and cannot profess Islam. Moreover, since it cannot be born in Pahang, it cannot be deemed to be a non-Malay subject of the Ruler of Pahang. Again, in view of a clear

definition of the word 'Malay' and the deeming provision in the Enactment, the word 'persons' in the expression 'persons not being Malay subjects of the said Ruler' must refer to natural persons.

I also find much force in En Sethu's argument that the word 'subjects' in s 6(i)(b) can only refer to natural persons because of an element of 'allegiance' attached to natural persons. In support of his proposition, counsel relied on *Arnerich v R* which established that anyone who for the time being owed allegiance to the Sovereign and enjoyed his protection, was fairly described as a 'subject' so long as a duty of allegiance and the right to protection existed. Thus, in the instant case, since the emphasis is on the word 'subjects' of the Ruler, it is reasonable to construe that only natural persons can give allegiance to the Ruler and enjoy his protection.

Upon a consideration of the Enactment as a whole and for reasons I have given, it is my conclusion that there is repugnancy in the context of the Enactment which indicates that the legislature had contemplated that the word 'persons' in the expression 'persons not being Malay subjects of the said Ruler' in s 6(i)(b) refers to natural persons only and excludes a corporation. In the circumstances, I do not think it necessary to say more than that the majority decision of the Court of Appeal was wrong in holding that the word 'persons' in the expression 'persons not being Malay subjects of the said Ruler' in s 6(i)(b) of the Enactment included a corporation.

I therefore agree with my learned brother, Mohd Azmi FCJ, that the appeal should be allowed with costs here and below.

Appeal allowed.

Reported by Loo Lai Mee